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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9719]

RIN 1545–BM62

Notional Principal Contracts; Swaps With Nonperiodic Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations amending the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts. These regulations provide that, subject to certain exceptions, a notional principal contract with a nonperiodic payment, regardless of whether it is significant, must be treated as two separate transactions consisting of one or more loans and an on-market, level payment swap. This document also contains temporary regulations regarding an exception from the definition of United States property. These regulations affect parties making and receiving payments under notional principal contracts, including United States shareholders of controlled foreign corporations and tax-exempt organizations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG–102656–15) on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective on May 8, 2015.

Applicability Date. For the dates of applicability, see §§ 1.446–3T(j)(2) and 1.956–2T(f).

FOR FURTHER INFORMATION CONTACT: Regarding the regulations under section 446, Alexa T. Dubert or Anna H. Kim at (202) 317–6895; regarding the regulations under section 956, Kristine A. Crabtree at (202) 317–6934 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Embedded Loan Rule

On October 14, 1993, the Treasury Department and the IRS published final regulations (TD 8491) under section 446(b) of the Internal Revenue Code (Code) in the **Federal Register** (58 FR 53125) relating to the timing of income, deduction, gain, or loss with respect to payments, including nonperiodic payments, made or received pursuant to a notional principal contract (NPC) (the 1993 Regulations). See § 1.446–3. Under the 1993 Regulations, when an NPC includes a ''significant'' nonperiodic payment, the contract is generally treated as two separate transactions consisting of an on-market, level payment swap and a loan (the embedded loan rule). The loan must be accounted for by the parties to the contract separately from the swap. The time-value component associated with the loan is recognized as interest for all purposes of the Code.

A nonperiodic payment commonly arises when a party to an NPC makes below-market periodic payments or receives above-market periodic payments under the terms of the contract. A party making below-market periodic payments or receiving above-market periodic payments would also typically be required to make an upfront payment to the counterparty to compensate for the off-market coupon payments specified in the contract. For example, if A and B enter into an off-market interest rate swap the terms of which require A to make periodic below-market, fixed rate payments to B in exchange for A receiving periodic on-market, floating-rate payments from B, then A typically will compensate B for receiving the below-market fixed rate payments by making an upfront payment at the outset of the interest rate swap so that the present value of the fixed rate leg of the swap will equal the present value of the floating rate leg of the swap.

II. Nonperiodic (Upfront) Payments Arising From the Standardization of Contract Terms

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, Title VII (the Dodd-Frank Act), among other things: (1) Provides for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposes clearing and trade execution requirements on many standardized swap contracts; (3) creates rigorous recordkeeping and real-time reporting regimes; and (4) enhances rulemaking and enforcement authority of various federal regulators with respect to entities and intermediaries within their jurisdiction. As part of implementing the Dodd-Frank Act, the Commodity Futures Trading Commission (CFTC) has mandated that certain swap contracts (cleared contracts), including swaps that are NPCs under § 1.446–3, be cleared through U.S.-registered derivatives clearing organizations. The Securities and Exchange Commission (SEC) has not yet mandated clearing of any security-based swaps through clearing agencies (which, together with derivatives clearing organizations, are referred to herein as U.S.-registered clearinghouses).

To facilitate clearing and exchange trading, cleared contracts generally have standardized terms, which often give rise to upfront payments. For example, a Market Agreed Coupon interest rate swap (MAC) has standardized terms, including a standardized coupon rate (or fixed rate). Because the fixed rate is set in advance, it is unlikely that the fixed rate will equal the market rate on the start date of the MAC. Consequently, except for the rare instance when the market rate for a particular MAC equals the fixed rate, a MAC with a standardized coupon rate will be off-market and will require an upfront payment to equalize the present value of the payment obligations under the contract.

Certain over-the-counter markets in swap contracts not subject to clearing with U.S.-registered clearinghouses (uncleared contracts) also have voluntarily begun to adopt terms similar to the MAC, including pre-defined, market-agreed start and end dates, payment dates, and fixed coupons to achieve greater standardization of

contract terms. Similar to cleared contracts, these uncleared contracts are resulting in an increasing number of upfront payments.

III. Margin Requirements

As part of establishing a risk-management framework, the SEC, CFTC, and certain other federal regulators (collectively, the Regulators) are required by the Dodd-Frank Act to propose and adopt collateral requirements for cleared contracts and certain uncleared contracts. These requirements are typically referred to as ''margin'' requirements in the context of contracts between entities that are regulated by the Regulators (regulated entities) and, in these temporary regulations, the term ''margin'' is used in the context of cleared and uncleared contracts between regulated entities and the term ''collateral'' is used in the context of uncleared contracts between unregulated entities.

A. Margin Requirements on Cleared Contracts

U.S.-registered clearinghouses manage credit risk (the risk of counterparty default) in part by requiring that each party to a cleared contract provide various types of margin in an amount that fully collateralizes the credit risk on the contract. Because credit risk starts at the inception of the contract and continues throughout the term of the contract, the requirement to exchange margin sufficient to fully collateralize credit risk begins when the parties enter into the contract. To ensure that credit risk on the contract is fully collateralized, the contract is marked to market on a daily basis (beginning on the day the contract is entered into) and margin is exchanged by the parties based on the mark-to-market value.

For example, if A and B enter into a cleared off-market interest rate swap contract the terms of which require A to make periodic below-market, fixed rate payments to B in exchange for A receiving periodic on-market, floating-rate payments from B, then A will make an upfront payment to the clearinghouse (to be passed on to B) so that the present value of the fixed rate leg of the swap will equal the present value of the floating rate leg of the swap. A has credit risk with respect to that payment because, if the clearinghouse (or A's clearing member) were to default, A may not receive the full benefit of receiving on-market, floating rate payments in exchange for making below-market fixed rate payments for the term of the contract. When the U.S.-registered clearinghouse makes the upfront payment to B, the U.S.-registered clearinghouse similarly has credit risk with respect to B (or B's clearing member). To eliminate the credit risk to A and B, the parties are required to post margin. More specifically, B (the ultimate recipient of the upfront payment) is required to make a payment of initial variation margin to the U.S.-registered clearinghouse, generally no later than the end of the business day on which the upfront payment is made, in an amount that is equal (or substantially equal) to the amount of the upfront payment.[1] After receiving B's initial variation margin payment, the U.S.-registered clearinghouse will pay the same amount to A.[2] Consequently, A is fully collateralized on the exposure on the swap contract at the end of the day the upfront payment is made.

In addition to initial variation margin, U.S.-registered clearinghouses manage credit risk by requiring that each party to a cleared contract provide daily variation margin. Daily variation margin is a cash payment made on a daily or intra-day basis between the counterparties to a contract to protect against the risk of counterparty default. The rules of U.S.-registered clearinghouses generally require that daily variation margin be paid in an amount equal to the change in the fair market value of the contract (the mark-to-market value). Thus, A and B will continue to mark to market the cleared contract and exchange daily variation margin based on those values on a daily basis for the entire term of the contract.

B. Margin Requirements on Uncleared Contracts Between Regulated Entities and the Exchange of Collateral on Uncleared Contracts Between Unregulated Entities

The margin requirements proposed by the Regulators for uncleared contracts are expected to appropriately address the credit risk posed by a counterparty that is a regulated entity and the risks associated with an uncleared contract and are expected to be as stringent as those required for cleared contracts.[3] In addition, unregulated entities that enter into uncleared contracts may exchange collateral sufficient to fully collateralize the mark-to-market exposure on the contract on a daily basis for the entire term of the contract (beginning on the day the contract is entered into).

IV. Other Recent Guidance and Comments Regarding the Embedded Loan Rule as Applied to Upfront Payments on Cleared and Uncleared Contracts

The Dodd-Frank Act has led to significant changes in market practices for cleared and uncleared contracts, including the increased volume of cleared and uncleared contracts with upfront payments. Under the 1993 Regulations, the parties to an NPC with an upfront payment are required to determine whether the upfront payment is a significant nonperiodic payment. If the payment is significant, the embedded loan rule will apply. In addition, under the 1993 Regulations, for purposes of section 956 (regarding United States property), the Commissioner may treat any nonperiodic payment, whether or not significant, as one or more loans.

On May 11, 2012, the Treasury Department and the IRS published temporary regulations under section 956 (TD 9589) in the **Federal Register** (77 FR 27612). On the same date, a notice of proposed rulemaking (REG–107548–11) by cross-reference to the temporary regulations was published in the **Federal Register** (77 FR 27669). These regulations excepted from the definition of United States property under section 956 certain obligations arising from upfront payments on cleared contracts with respect to which full initial variation margin is posted (the Section 956 Regulations). In response to the request for comments and, more generally, because of the growing number of upfront payments on cleared and uncleared contracts, the Treasury Department and the IRS have received several comment letters noting the potentially burdensome tax consequences associated with treating an upfront payment as one or more

[1] The total amount of initial variation margin posted by B may not equal the amount of A's upfront payment due to either: (1) The netting of B's notional exposure to A, or to the U.S.-registered clearinghouse, as a result of other transactions; or (2) changes in the value of the contract between the time the contract is entered into and the time when the required margin is paid, requiring daily variation margin to be added to or subtracted from B's initial variation margin payment, as the case may be. However, on a transaction-by-transaction basis, the payment of initial variation margin by B should equal (or closely approximate) A's upfront payment when any daily variation margin is treated as separate from the initial variation margin posted on that day.

[2] In each case, unless A and B are clearing members of the U.S.-registered clearinghouse, the payment is made to or through each party's clearing member (that is, a futures commission merchant, broker, or dealer who is a member of the clearinghouse), which may be an affiliate of that party.

[3] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 FR 59898 (October 3, 2014); Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO), Margin Requirements for Non-centrally Cleared Derivatives (September 2013).

loans. For example, the 1993 Regulations do not define what constitutes a ''significant'' nonperiodic payment. Instead, examples in the 1993 Regulations illustrate contracts with and without significant nonperiodic payments and explain how to determine significance by comparing the nonperiodic payment to the present value of the total amount of payments due under the contract. Commenters have noted that the lack of a definition in the embedded loan rule for when such a payment is significant creates uncertainty and that taxpayers have developed different ways to determine ''significance'' for this purpose.

In addition, commenters have argued that receiving an upfront payment and posting cash margin back to the payor of the upfront payment lacks the most important attribute of indebtedness because the recipient lacks discretion as to the payment's use. Commenters also have raised concerns of increased compliance burdens arising from withholding and information reporting resulting from the increasing number of upfront payments treated as loans. Commenters specifically cite the difficulty of satisfying information reporting on upfront payments arising from cleared contracts because a U.S-registered clearinghouse is interposed between the first party and second party once a contract is submitted and accepted for clearing.

Commenters also have raised concerns that receipt by a tax-exempt organization of an upfront payment arising from entering into a standardized cleared or uncleared contract (the loan separated from the on-market swap under the embedded loan rule) may cause income earned on the tax-exempt organization's deployment of the upfront payment to constitute unrelated business taxable income under the debt-financed property rules of section 514. Finally, commenters have requested that the exception in the Section 956 Regulations be extended to uncleared contracts with upfront payments with respect to which full initial variation margin is posted.

Explanation of Provisions

The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The temporary regulations under section 446 simplify the embedded loan rule and provide two exceptions to that rule. The temporary regulations under section 956 provide an exception to the definition of United States property with respect to certain notional principal contracts subject to margin or collateral requirements as described in the temporary regulations under section 446.

I. Simplification of the Embedded Loan Rule

Because excepting non-significant nonperiodic payments from the embedded loan rule is not functioning as a rule of administrative convenience as intended, these temporary regulations eliminate that exception. Instead, other than contracts for which there is an explicit exception, the temporary regulations treat all notional principal contracts that have nonperiodic payments as including one or more loans. The Treasury Department and the IRS have determined that, unless an exception applies, the economic loan that is inherent in a nonperiodic payment should be taxed as one or more loans, and that it is reasonable to require taxpayers to separate the loan or loans from an NPC in the case of any nonperiodic payment, regardless of the relative size of such payment. Taxpayers may implement this change upon publication in the **Federal Register**, but for those taxpayers that need additional time, the temporary regulations delay the applicability date of this rule until November 4, 2015.

II. Exceptions to the Embedded Loan Rule

The temporary regulations provide two independent exceptions from the embedded loan rule. First, except for purposes of sections 514 and 956, the temporary regulations provide an exception for a nonperiodic payment made under an NPC with a term of one year or less (short-term exception).

Second, the temporary regulations provide an exception for certain NPCs with nonperiodic payments that are subject to prescribed margin or collateral requirements. The embedded loan rule is intended to address situations when one party to a contract provides cash to the counterparty and is compensated for that cash with a direct or indirect interest payment. The Treasury Department and the IRS have concluded, however, that the same concerns do not exist when a party pays or receives an upfront payment and must immediately collect or post an equivalent amount of cash margin or collateral. Accordingly, in those circumstances, the Treasury Department and the IRS have determined that the embedded loan rule should not apply to the upfront payment.

In order to qualify for the exception, the regulations require both that the margin or collateral posted and collected be paid in cash and that the parties to the contract be required to post and collect margin or collateral in an amount that fully collateralizes the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment) on a daily basis for the entire term of the contract. The mark-to-market exposure on a cleared contract will be fully collateralized only if the contract is subject to both initial variation margin in an amount equal to the nonperiodic payment (except for variances permitted by intraday price changes) and daily variation margin in an amount equal to the daily change in the fair market value of the contract, and on an uncleared contract if it is subject to equivalent margin or collateral requirements (full margin exception). A taxpayer may use the full margin exception without regard to whether the contract qualifies for the short-term exception.

The Treasury Department and the IRS request comments on whether there are other circumstances in which the embedded loan rule should not apply. For example, there may be circumstances in which time value is appropriately accounted for under the contract because applying the embedded loan rule would not alter the tax consequences of the contract. In particular, the Treasury Department and the IRS request comments on whether it is necessary to require taxpayers to apply the embedded loan rule to NPCs with nonperiodic payments that are subject to mark-to-market accounting.

Finally, the Treasury Department and the IRS request comments on all other aspects of the temporary and proposed rules, including but not limited to any anticipated effects on market participants' behavior, the applicability of the full margin exception only in cases in which cash margin is posted, or possible effects on the goal of the Dodd-Frank Act to encourage centralized clearing of swaps.

III. Exception to the Definition of United States Property

The temporary regulations under section 956 provide an exception to the definition of United States property for certain obligations of United States persons arising from upfront payments made with respect to notional principal contracts that qualify for the full margin exception to the embedded loan rule in the temporary regulations under section 446. To qualify for the United States property exception, the upfront payment must be made by a controlled foreign corporation (as defined in section 957(a)) that is either a dealer in

securities under section 475(c)(1) or a dealer in commodities.

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 13653. 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 these 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 Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities.

Drafting Information

The principal authors of these regulations are Alexa T. Dubert and Anna H. Kim of the Office of 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.

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 1.446–3 is amended by:

■ 1. Revising paragraph (g)(4).

■ 2. Revising paragraph (g)(6), *Examples 2, 3* and *4.*

■ 3. Redesignating paragraph (j) as (j)(1) and revising the paragraph heading of paragraph (j)(1).

■ 4. Adding paragraphs (j)(2) and (k).

The revisions and addition to read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(g) * * *

(4) [Reserved]. For further guidance, see § 1.446–3T(g)(4).

* * * * *

(6) * * *

Example 2. [Reserved]. For further guidance, see § 1.446–3T(g)(6), *Example 2.*

Example 3. [Reserved]. For further guidance, see § 1.446–3T(g)(6), *Example 3.*

Example 4. [Reserved]. For further guidance, see § 1.446–3T(g)(6), *Example 4.*

* * * * *

(j) *Effective/applicability date*—(1) * * *

(2) [Reserved]. For further guidance, see § 1.446–3T(j)(2).

(k) [Reserved]. For further guidance, see § 1.446–3(k).

■ **Par. 3.** Section 1.446–3T is added to read as follows:

§ 1.446–3T Notional principal contracts (temporary).

(a) through (g)(3) [Reserved]. For further guidance, see § 1.446–3(a) through (g)(3).

(4) *Notional principal contracts with nonperiodic payments*—(i) *General rule.* Except as provided in paragraph (g)(4)(ii) of this section, a notional principal contract with one or more nonperiodic payments is treated as two separate transactions consisting of an on-market, level payment swap and one or more loans. The loan(s) must be accounted for by the parties to the contract independently of the swap. The time value component associated with the loan(s) is not included in the net income or net deduction from the swap under § 1.446–3(d), but it is recognized as interest for all purposes of the Internal Revenue Code. See paragraph (g)(6) *Example 2* of this section.

(ii) *Exceptions*—(A) *Notional principal contract with a term of one year or less*—(*1*) *General rule.* Except for purposes of sections 514 and 956, paragraph (g)(4)(i) of this section does not apply to a notional principal contract if the term of the contract is one year or less. For purposes of this paragraph (g)(4)(ii)(A), the term of a notional principal contract is the stated term of the contract, inclusive of any extensions (optional or otherwise) provided for in the terms of the contract, without regard to whether any extension is unilateral, is subject to approval by one or both parties to the contract, or is based on the occurrence or non-occurrence of a specified event.

(*2*) *Anti-abuse rule.* For purposes of determining the term of a contract under paragraph (g)(4)(ii)(A)(*1*) of this section, the Commissioner may treat two or more contracts as a single contract if a principal purpose of entering into separate contracts is to qualify for the exception set forth in paragraph (g)(4)(ii)(A)(*1*) of this section. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(B) *Notional principal contract subject to margin or collateral requirements.* Subject to the requirements in paragraph (g)(4)(ii)(C) of this section, paragraph (g)(4)(i) of this section does not apply to a notional principal contract if the contract is described in paragraph (g)(4)(ii)(B)(*1*) or (*2*) of this section. See § 1.956–2T(b)(1)(xi) for a related exception under section 956.

(*1*) The contract is cleared by a derivatives clearing organization (as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) or by a clearing agency (as such term in defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act of 1934, respectively, and the derivatives clearing organization or clearing agency requires the parties to the contract to post and collect margin or collateral to fully collateralize the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment) on a daily basis for the entire term of the contract. The mark-to-market exposure on a contract will be fully collateralized only if the contract is subject to both initial variation margin in an amount equal to the nonperiodic payment (except for variances permitted by intraday price changes) and daily variation margin in an amount equal to the daily change in the fair market value of the contract. See paragraph (g)(6) *Example 3* of this section.

(*2*) The parties to the contract are required, pursuant to the terms of the contract or the requirements of a federal regulator, to post and collect margin or collateral to fully collateralize the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment) on a daily basis for the entire term of the contract. The mark-to-market exposure on a contract will be fully collateralized only if the contract is subject to both initial variation margin or collateral in an amount equal to the nonperiodic payment (except for variances permitted by intraday price changes) and daily variation margin or collateral in an amount equal to the daily change in the fair market value of the contract. For purposes of this paragraph (g)(4)(ii)(B)(*2*), the term ''federal regulator'' means the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), or a prudential

regulator, as defined in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as amended by section 721 of the Dodd-Frank Act. See paragraph (g)(6) *Example 4* of this section.

(C) *Limitations and special rules*—(*1*) *Cash requirement.* A notional principal contract is described in paragraph (g)(4)(ii)(B) of this section only to the extent the parties post and collect margin or collateral to fully collateralize the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment) by paying and receiving the required margin or collateral in cash. The term ''cash'' includes U.S. dollars or cash in any currency in which payment obligations under the notional principal contract are denominated.

(*2*) *Excess margin or collateral.* For purposes of paragraph (g)(4)(ii)(B)(*2*) of this section, if the amount of cash margin or collateral posted and collected is in excess of the amount necessary to fully collateralize the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment) on a daily basis for the entire term of the contract, any excess is subject to the rule in paragraph (g)(4)(i) of this section.

(*3*) *Margin or collateral paid and received in cash and other property.* If the parties to the contract post and collect both cash and other property to satisfy margin or collateral requirements to collateralize the mark-to-market exposure on the contract (including the exposure on the nonperiodic payment), any excess of the nonperiodic payment over the cash margin or collateral posted and collected is subject to the rule in paragraph (g)(4)(i) of this section.

(5) [Reserved]. For further guidance, see § 1.446–3(g)(5).

(6) *Examples* through *Example 1.* [Reserved]. For further guidance, see § 1.446–3(g)(6), *Examples* through *Example 1.*

Example 2. Nonperiodic payment. (i) On January 1, 2016, unrelated parties M and N enter into an interest rate swap contract. Under the terms of the contract, N agrees to make five annual payments to M equal to LIBOR times a notional principal amount of $100 million. In return, M agrees to pay N 6% of $100 million annually, plus an upfront payment of $15,163,147 on January 1, 2016. At the time M and N enter into the contract, the rate for similar on-market swaps is LIBOR to 10%, and N provides M with information that the amount of the upfront payment was determined as the present value, at 10% compounded annually, of five annual payments from M to N of $4,000,000 (4% of $100,000,000). The contract does not require the parties to post and collect margin or collateral to collateralize the mark-to-market exposure on the contract on a daily basis for the entire term of the contract.

(ii) The exceptions in paragraphs (g)(4)(ii)(A) and (B) of this section do not apply. Under paragraph (g)(4)(i) of this section, the transaction is recharacterized as consisting of both a $15,163,147 loan from M to N that N repays in installments over the term of the contract and an interest rate swap between M and N in which M immediately pays the installment payments on the loan back to N as part of its fixed payments on the swap in exchange for the LIBOR payments by N.

(iii) The upfront payment is recognized over the life of the contract by treating the $15,163,147 as a loan that will be repaid with level payments over five years. Assuming a constant yield to maturity and annual compounding at 10%, M and N account for the principal and interest on the loan as follows:

	Level payment	Interest component	Principal component
2016	$4,000,000	$1,516,315	$2,483,685
2017	4,000,000	1,267,946	2,732,054
2018	4,000,000	994,741	3,005,259
2019	4,000,000	694,215	3,305,785
2020	4,000,000	363,636	3,636,364
	20,000,000	4,836,853	15,163,147

(iv) M recognizes interest income, and N claims an interest deduction, each taxable year equal to the interest component of the deemed installment payments on the loan. These interest amounts are not included in the parties' net income or net deduction from the swap contract under § 1.446–3(d). The principal components are needed only to compute the interest component of the level payment for the following period and do not otherwise affect the parties' net income or net deduction from this contract.

(v) N also makes swap payments to M based on LIBOR and receives swap payments from M at a fixed rate that is equal to the sum of the stated fixed rate and the rate calculated by dividing the deemed level annual payments on the loan by the notional principal amount. Thus, the fixed rate on this swap is 10%, which is the sum of the stated rate of 6% and the rate calculated by dividing the annual loan payment of $4,000,000 by the notional principal amount of $100,000,000, or 4%. Using the methods provided in § 1.446–3(e)(2), the fixed swap payments from M to N of $10,000,000 (10% of $100,000,000) and the LIBOR swap payments from N to M are included in the parties' net income or net deduction from the contract for each taxable year.

Example 3. Full margin—cleared contract. (i) A, a domestic corporation enters into an interest rate swap contract with unrelated counterparty B. The contract is required to be cleared and is accepted for clearing by a U.S.-registered derivatives clearing organization (DCO). The standardized terms of the contract provide that A, for a term of X years, will pay B a fixed coupon of 1% per year and receive a floating coupon on a notional principal amount of $Y. When A and B enter into the interest rate swap, the market coupon for similar interest rate swaps is 2% per year. The DCO requires A to make an upfront payment to compensate B for the below-market annual coupon payments that B will receive, and A makes the upfront payment in cash. The DCO also requires B to post initial variation margin in an amount equal to the upfront payment and requires each party to post and collect daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract. B posts the initial variation margin in U.S. dollars, and the parties post and collect daily variation margin in U.S. dollars.

(ii) Because the contract is subject to initial variation margin in an amount equal to the upfront payment and daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in paragraph (g)(4)(ii)(B)(*1*) of this section and paragraph (g)(4)(i) of this section does not apply to the contract.

Example 4. Full margin—uncleared contract. (i) On June 1, 2016, P, a domestic corporation, enters into an interest rate swap contract with an unrelated domestic counterparty, CP. Under the terms of the contract, CP agrees to make five annual payments to P equal to a specified contract rate of 3% times the notional amount of $10,000,000 plus an upfront payment of $1,878,030. In exchange, P agrees to make five annual payments to CP equal to the same notional amount times LIBOR. At the time the parties enter into the contract, the fixed rate for an on-market swap is 7.52%. The contract is not required to be cleared and is not accepted for clearing by a U.S.-registered derivatives clearing organization. However, pursuant to the terms of the contract, P is obligated to post $1,878,030 as collateral with CP, and P and CP are obligated to post and collect collateral each business day in an amount equal to the daily change in the fair market value of the contract for the entire

term of the contract. All collateral on the contract is required to be in U.S. dollars.

(ii) Because the contract is required to be collateralized in an amount equal to the upfront payment and changes in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in paragraph (g)(4)(ii)(B)(*2*) of this section and paragraph (g)(4)(i) of this section does not apply to the contract.

(h) through (j)(1) [Reserved]. For further guidance, see § 1.446–3(h) through (j)(1).

(2) *Application of § 1.446–3T(g)(4).* The rules provided in paragraph (g)(4)(i) of this section apply to notional principal contracts entered into on or after November 4, 2015. Taxpayers may apply the rules provided in paragraph (g)(4)(i) of this section to notional principal contracts entered into before November 4, 2015. The rules provided in paragraph (g)(4)(ii) of this section apply to notional principal contracts entered into on or after May 8, 2015. Taxpayers may apply the rules provided in paragraph (g)(4)(ii) of this section to notional principal contracts entered into before May 8, 2015. For the rules that apply to notional principal contracts with nonperiodic payments entered into before the dates set forth in this paragraph (j)(2), see § 1.446–3(g)(4) as contained in 26 CFR part 1, revised April 1, 2015.

(k) *Expiration date.* The applicability of paragraph (g)(4) of this section and paragraph (g)(6) *Examples 2, 3* and *4* of this section expires May 7, 2018.

■ **Par. 4.** Section 1.956–2T is amended by revising paragraphs (b)(1)(xi), (f) and (g) to read as follows:

§ 1.956–2T Definition of United States property (temporary).

* * * * *

(b) * * *

(1) * * *

(xi) An obligation of a United States person arising from a nonperiodic payment by a controlled foreign corporation (within the meaning of section 957(a)) with respect to a notional principal contract described in § 1.446–3T(g)(4)(ii)(B)(*1*) or (*2*) if the following conditions are satisfied—

(A) The controlled foreign corporation that makes the nonperiodic payment is either a dealer in securities (within the meaning of section 475(c)(1)) or a dealer in commodities; and

(B) The conditions set forth in § 1.446–3T(g)(4)(ii)(C)(*1*) (relating to full margin or collateral in cash) are satisfied.

(C) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(xi):

Example 1. Full margin—cleared contract. (i) A domestic corporation (U.S.C.) wholly owns a controlled foreign corporation (CFC) that is a dealer in securities under section 475(c)(1). CFC enters into an interest rate swap contract with unrelated counterparty B. The contract is required to be cleared and is accepted for clearing by a U.S.-registered derivatives clearing organization (DCO). CFC is not a member of the DCO. CFC uses a U.S. affiliate (CM), which is a member of the DCO, as its clearing member to submit the contract to be cleared. CM is a domestic corporation that is wholly owned by U.S.C.. The standardized terms of the contract provide that, for a term of X years, CFC will pay B a fixed coupon of 1% per year and receive a floating coupon on a notional principal amount of $Y. When CFC and B enter into the contract, the market coupon for similar interest rate swaps is 2% per year. The DCO requires CFC to make an upfront payment to compensate B for the below-market annual coupon payments that B will receive, and CFC makes the upfront payment in cash. CFC makes the upfront payment through CM to the DCO, which then makes the payment to B. The DCO also requires B to post initial variation margin in an amount equal to the upfront payment and requires each party to post and collect daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract. B posts the initial variation margin in U.S. dollars, which is received by CFC (through DCO and CM), and the parties post and collect daily variation margin in U.S. dollars.

(ii) Because the contract is subject to initial variation margin in an amount equal to the upfront payment and daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in § 1.446–3T(g)(4)(ii)(B)(*1*). Furthermore, because the additional conditions set forth in this paragraph (b)(1)(xi) are satisfied, the obligation of CM arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

Example 2. Full margin—uncleared contract. (i) Assume the same facts as in *Example 1,* except for the following. CFC's counterparty to the contract is U.S.C., CM is not involved, and the contract is not required to be cleared and is not accepted for clearing by a U.S.-registered derivatives clearing organization. The contract requires CFC to make an upfront payment to compensate U.S.C. for the below-market annual coupon payments that U.S.C. will receive, and CFC makes the upfront payment in U.S. dollars. Pursuant to the requirements of a federal regulator, U.S.C. is obligated to post initial variation margin with CFC in an amount equal to CFC's upfront payment, and U.S.C. and CFC are obligated to post and collect daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract. U.S.C. posts the initial variation margin in U.S. dollars, which is received by CFC, and the parties post and collect daily variation margin in U.S. dollars.

(ii) Because the contract is subject to initial variation margin in an amount equal to the upfront payment and daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in § 1.446–3T(g)(4)(ii)(B)(*2*). Furthermore, because the additional conditions set forth in this paragraph (b)(1)(xi) are satisfied, the obligation of U.S.C. arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

* * * * *

(f) *Effective/applicability date.* Paragraph (b)(1)(xi) of this section applies to payments described in § 1.956–2T(b)(1)(xi) made on or after May 8, 2015. Taxpayers may apply the rules of paragraph (b)(1)(xi) to payments made before May 8, 2015.

(g) *Expiration date.* The applicability of paragraph (b)(1)(xi) of this section expires on May 7, 2018.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 29, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–11092 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0366]

Drawbridge Operation Regulation; Navesink (Swimming) River, Middletown and Rumson, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Oceanic Bridge across the Navesink (Swimming) River, mile 4.5, between Middletown and Rumson, New Jersey. This deviation allows the bridge owner to perform structural repairs at the bridge. This deviation allows the bridge to open only one of the two moveable spans for passage of vessels traffic. This temporary deviation would help facilitate repairs to the bascule span bearing while continuing to meet the reasonable needs of navigation.

DATES: This deviation is effective from May 26, 2015 through June 12, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0366] is

available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. 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 temporary deviation, call or email Mr. Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 514–4336, *joe.m.arca@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Oceanic Bridge across Navesink (Swimming) River, mile 4.5, between Middletown and Rumson, New Jersey, has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water, and horizontal clearance of 75 feet. The existing bridge operating regulations are found at 33 CFR 117.734.

The waterway is transited by seasonal recreational vessels of various sizes.

The bridge owner, Monmouth County, requested a temporary deviation from the normal operating schedule to facilitate repairs to the bascule span bearing.

Under this temporary deviation the Oceanic Bridge shall open on signal, except that, from May 26, 2015 through June 12, 2015, only one of the two moveable spans need open for the passage of vessels traffic.

There are no alternate routes for vessel traffic.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: April 30, 2015.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2015–11188 Filed 5–7–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0287]

RIN 1625–AA00

Safety Zone, Pamlico River; Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Pamlico River in Washington, NC. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within the safety zone during the enforcement period is prohibited without approval of the Captain of the Port or his designated Representative.

DATES: This rule is effective from 8:30 p.m. to 9:30 p.m. on May 25, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0287]. 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 LT Derek J. Burrill, Waterways Management Division Chief, Sector North Carolina, Coast Guard; telephone (910) 772–2230, email *Derek.J.Burrill@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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 immediate action is required to provide for the safety of mariners on the navigable waters during the fireworks display on May 25, 2015. Delaying the effective date for comment would be contrary to the public interest, since immediate action is needed to ensure protection of persons and vessels transiting the area.

For similar reasons, 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**.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The purpose of this safety zone is to protect mariners and the public from hazards to navigation associated with the fireworks displays on Pamlico River in Washington, NC on May 25, 2015.

C. Discussion of the Final Rule

On May 25, 2015, the Washington Harbor District Alliance will sponsor a fireworks display for the ''Memorial Day Event'' at a position located on the southwest shore of the Pamlico River in Washington, NC at latitude 35°32′25″ N longitude 077°03′42″ W. The fireworks debris fallout area will extend over the navigable waters of the Pamlico River. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, including accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted from transiting within the fireworks launch and fallout area. This safety zone will be established and enforced from 8:30 p.m. to 9:30 p.m. on May 25, 2015.

Access to the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area. The Captain of the Port will give notice

of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

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.

Although this safety zone restricts vessel traffic through the regulated area, the effect of this rule will not be significant because: (i) This rule is of limited size and duration, and (ii) this rule will be well publicized to allow mariners to make alternative plans for transiting the affected area.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in waters of the Pamlico River within a 300 yard radius of latitude 35°32′25″ N, longitude 077°03′42″ W position during the enforcement period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is of limited size and duration, and (ii) maritime advisories will be issued in advance allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 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. This rule is categorically excluded from further review under paragraph 34–g of Figure 2–1 of the Commandant Instruction. 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0287 to read as follows:

165.T05–0287 Safety Zone, Pamlico River; Washington, North Carolina

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: specified waters of the Pamlico River within a 300 yard radius of latitude 35°32′25″ N, longitude 077°03′42″ W in Washington, North Carolina.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, North Carolina or his designated representatives.

(2) The Captain of the Port, North Carolina or his designated Representative can be reached at telephone number (910) 343–3882.

(3) The Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement period.* This rule will be enforced from 8:30 p.m. to 9:30 p.m. on May 25, 2015.

Dated: April 27, 2015.

S. R. Murtagh,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2015–11176 Filed 5–7–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–1017]

RIN 1625–AA00, 1625–AA00

Safety Zone; Marine Safety Unit Savannah Safety Zone for Heavy Weather and Other Natural Disasters, Savannah Captain of the Port Zone, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone throughout the Marine Safety Unit Savannah Captain of the Port Zone. This action is necessary to consolidate, clarify, and otherwise modify safety regulations to better meet safety needs within the ports of Savannah and Brunswick. This action establishes safety zones in the event of natural or manmade disasters affecting navigable waterways within the Marine Safety Unit Savannah Captain of the Port Zone.

DATES: This rule is effective on June 1, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–1017. 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 Lieutenant Christopher D. McElvaine, U.S. Coast Guard Marine Safety Unit Savannah at (912) 652–4353 or email at *Christopher.d.mcelvaine@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, 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 Information

On February 27, 2015, we published a notice of proposed rulemaking entitled Safety Zone; Marine Safety Unit Savannah Safety Zone for Heavy Weather and Other Natural Disasters, Savannah Captain of the Port Zone, Savannah, GA. We received one public comment in support of the safety zone. No public meeting was requested, and none was held. No other documents were published as part of this rulemaking.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of these regulations is to ensure the safety of life on navigable waters of the United States through the addition of regulations in the event of natural and other disasters.

C. Discussion of Rule

The Coast Guard is establishing a temporary safety zone throughout the Marine Safety Unit Savannah Captain of the Port Zone. This action is necessary to consolidate, clarify, and otherwise modify safety and security zone regulations within the Ports of Savannah and Brunswick. This action would establish a safety zone in the event of a disaster affecting navigable waterways within the Marine Safety Unit Savannah Captain of the Port Zone.

Only one positive comment was received in support of the regulation. No changes were made in the rule making.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses 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, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The regulations that are being added are not expected to have a significant regulatory impact due to the infrequency of use for the safety zone.

2. Impact of 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 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 received no comments from the Small Business Administration on this rule. 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 safety zone would not have a significant impact on a substantial number of small entities for the following reasons: The safety zone would be activated and subject to enforcement only during the event of natural or other disasters.

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 FUTHER 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 calls for no 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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have 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 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 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 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 analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, 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 waterway use restrictions that would be otherwise published as a Temporary Final Rule within the Savannah Captain of the Port Zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comment or information that may lead to the discovery of a significant environmental impact from the 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; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.780 to read as follows:

§ 165.780 Safety Zone; Marine Safety Unit Savannah Safety Zone for Heavy Weather and other Natural Disasters, Savannah Captain of the Port Zone, Savannah, GA.

(a) *Regulated areas.* The following areas are established as safety zones during the specified conditions:

(1) *Savannah, GA.* All waters within the Port of Savannah, GA, encompassed within following locations: starting at the demarcation line drawn across the seaward extremity of the Savannah River entrance, and encompassing all of the waters of the Savannah River, Savannah GA.

(2) *Brunswick, GA.* All waters starting at the demarcation line drawn across the seaward extremity of the Savannah River entrance, and encompassing all of the waters of the Brunswick River, Brunswick GA.

(3) All coordinates are North American Datum 1983.

(b) *Definition.* (1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Savannah in the enforcement of the regulated area.

(2) *Hurricane Port Condition YANKEE.* Set when weather advisories indicate that sustained Gale Force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(3) *Hurricane Port Condition ZULU.* Set when weather advisories indicate that sustained Gale Force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.* (1) *Hurricane Port Condition YANKEE.* All commercial, oceangoing vessels and barges over 500 GT are prohibited from entering the regulated areas designated as being in Port Condition YANKEE; within 24 hours of anticipated landfall of gale force winds (39 mph) from tropical or hurricane force storm; or upon the Coast Guard setting Port Condition YANKEE for inbound ocean going commercial vessel traffic over 500 GT. Oceangoing commercial vessel traffic outbound will be authorized to transit through the regulated areas until Port Condition ZULU.

(2) *Hurricane Port Condition ZULU.* All commercial, oceangoing vessels and barges over 500 GT are prohibited from entering the regulated areas designated as being in Port Condition ZULU; within 12 hours of anticipated landfall of a tropical storm or hurricane; or upon the Coast Guard setting Port Condition ZULU, unless written permission is obtained from the Captain of the Port. All ship-to-shore cargo operations must cease six hours prior to setting Port Condition Zulu.

(3) *Emergency Waterway Restriction for Other Disasters.* Any natural or other disasters that are anticipated to affect the COTP Savannah AOR will result in the prohibition of commercial vessel traffic transiting or remaining in any of the two regulated areas predicted to be affected as designated by the COTP Savannah.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain in the regulated area may contact the Captain of the Port Savannah via telephone at (912)–247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain in the regulated area is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

(5) Coast Guard Marine Safety Unit Savannah will attempt to notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners or by on-scene designated representatives.

(6) The Coast Guard will provide notice of the regulated area via Broadcast Notice to Mariners or by on-scene designated representatives.

(7) This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: April 28, 2015.

O. Vazquez,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Savannah.

[FR Doc. 2015–11177 Filed 5–7–15; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Approved Price Changes

AGENCY: Postal Service™.

ACTION: Notice of approval of price changes for international mailing services.

SUMMARY: On Friday, January 23, 2015, the Postal Service published a notice in the **Federal Register** of proposed price adjustments to international mailing services, to reflect a notice of price adjustments that we filed with the Postal Regulatory Commission (PRC) on January 15, 2015. The PRC has found that price adjustments contained in the Postal Service's notice may go into effect on May 31, 2015. The Postal Service will revise Notice 123, *Price List* to reflect the new prices.

DATES: *Effective:* May 31, 2015.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin at 202–268–2537.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On January 15, 2015, the Postal Service filed a notice of international mailing services price adjustment with the PRC, effective on April 26, 2015. On January 23, 2015, the USPS™ published a notice of proposed price changes in the **Federal Register** entitled ''*International Mailing Services: Proposed Price Changes*'' (80 FR 3536). The notice included price changes that we would adopt for products and services covered by *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) and publish in Notice 123, *Price List,* on *Postal Explorer*® at *pe.usps.com.* We received one comment, simply requesting no price change.

II. Decision of the Postal Regulatory Commission

As prescribed in the PRC's Order No.2365, issued on February 24, 2015, Order No. 2388, issued on March 10, 2015, and Order No. 2461, issued on April 30, 2015, in Docket No. R2015–4, the PRC found that the prices in the Postal Service's notice that was published on January 23, 2015, may go into effect on May 31, 2015. The new prices will accordingly be posted in Notice 123, on *Postal Explorer* at *pe.usps.com.*

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–11068 Filed 5–7–15; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2014–0908; FRL–9925–42]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 25 chemical substances which were the subject of premanufacture notices (PMNs). Nine of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (including import) or process any of these 25 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on July 7, 2015. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 22, 2015.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before June 8, 2015 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before June 8, 2015, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0908, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405 M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (FRL–3658–5). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a

''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 25 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 25 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or the basis for the TSCA non-section 5(e) SNURs (*i.e.,* SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes nine PMN substances (P–12–115, P–12–116, P–13–568, P–13–646, P–13–647, P–13–648, P–13–649, P–13–678, and P–13–679) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''TSCA section 5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The TSCA section 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 16 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''TSCA non-section 5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all TSCA non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.,* these significant new use activities are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Numbers P–12–115, P–12–116, and P–13–568

Chemical names: (P–12–115) Alkylbenzene sulfonic acid (generic) and (P–12–116 and P–13–568) Benzenesulfonic acid, dimethyl-, alkyl derivatives, sodium salt (generic).

CAS numbers: Claimed confidential.

Effective date of TSCA section 5(e) consent orders: August 1, 2014 (P–12–115 and P–12–116) and July 2, 2014 (P–13–568).

Basis for TSCA section 5(e) consent orders: The PMNs state that P–12–115 will be used as a chemical intermediate to prepare an interfacial tension reducer for enhanced oil recovery, P–12–116 will be used as an interfacial tension reducer for enhanced oil recovery, and P–13–568 will be used generically in enhanced oil recovery applications. Based on surfactant properties and SAR analysis of test data on PMN substance P–13–568 and other analogous substances, EPA identified concerns for corrosion to the eyes, mucous membranes, lungs, and skin. In addition, based on test data on the PMN substances P–12–116 and P–13–568, as well as test data on analogous substances, EPA predicts toxicity to aquatic organisms at concentrations that exceed 4 parts per billion (ppb) of the PMN substances in surface waters. The consent order for PMNs P–12–115 and

P–12–116 was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the uncontrolled manufacture, processing, distribution in commerce, use and disposal of the PMN substances may present an unreasonable risk to the environment. The consent order for PMN P–13–568 was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that that the uncontrolled manufacture, processing, distribution in commerce, use and disposal of the PMN substance may present an unreasonable risk to human health and the environment. To protect against these risks, the consent orders require:

1. Manufacturing, processing, or use of the PMN substance P–12–115 only as a chemical intermediate to prepare an interfacial tension reducer for enhanced oil recovery.

2. Manufacturing, processing, or use of the PMN substance identified as P–12–116 and P–13–568 only as an interfacial tension reducer for enhanced oil recovery or for the specific confidential enhanced oil recovery applications described in the consent order for PMN P–13–568.

3. No predictable or purposeful release of the PMN substances from manufacturing, processing or use into the waters of the United States that result in surface water concentrations exceeding 4 ppb.

4. Individual aggregate production volume limits for the PMN substance identified as P–12–116 and P–13–568 shall not exceed the confidential production limit identified in the consent order for PMN P–13–568.

5. Establishment and use of a hazard communication program, including environmental hazard precautionary statements on each label and the MSDS for the PMN substance P–12–115.

6. Establishment and use of a hazard communication program, including human health and environmental hazard precautionary statements on each label and the MSDS for the PMN substance identified as P–12–116 and P–13–568.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) in clean dilution water; and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10812 (P–12–115) and 40 CFR 721.10813 (P–12–116 and P–13–568).

PMN Number P–12–397

Chemical name: 2-Propenoic acid, 3-phenyl-, zinc salt (2:1), (2E)-.

CAS number: 18957–59–0.

Basis for action: The PMN states that the PMN substance will be used as a reinforcing additive in polyolefins. Based on structure activity relationship (SAR) analysis of test data on analogous zinc salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 3 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a reinforcing additive in polyolefins may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OPPTS Test Guideline 835.3110) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10814.

PMN Number P–13–139

Chemical name: Fatty acids, satd. and unsatd alkyl-, esters with polyol (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as an ingredient in multipurpose additive in gasoline to reduce friction in engines. Based on SAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 190 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 190 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as an ingredient in multipurpose additive in gasoline to reduce friction in engines may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (Organisation for Economic Co-operation and Development (OECD) Test Guideline 23) be consulted to facilitate solubility in the test media.

CFR citation: 40 CFR 721.10815.

PMN Numbers P–13–646, P–13–647, P–13–648, P–13–649, P–13–678, and P–13–679

Chemical names: (P–13–646 and P–13–648) Fluoroalkyl acrylate copolymer modified with polysiloxanes (generic); (P–13–647, P–13–649, and P–13–679) Fluoroalkyl acrylate copolymer (generic); and (P–13–678) Fluoroalkyl methacrylate copolymer (generic).

CAS numbers: Claimed confidential.

Effective date of TSCA section 5(e) consent order: August 4, 2014.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be as a tile treatment (P–13–646 and P–13–648), a textile treatment (P–13–647 and P–13–649), a water and oil repellent for plastic and inorganic substrates (P–13–678), and a paper treatment (P–13–679). EPA has concerns for potential incineration or other decomposition products of the PMN substances. These perfluorinated decomposition products may be

released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, which suggests that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, including the presumed environmental degradant. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Submission of certain physical/chemical property and environmental fate testing prior to exceeding the confidential production volume limits of the PMN substances specified in the consent order.

3. Recording and reporting of certain fluorinated impurities in the starting raw material; and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain toxicity, physical/chemical property and environmental fate testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substances and their degradation products. The Order prohibits the Company from exceeding specified confidential production volumes unless the Company submits the information described in the Testing section of this Order in accordance with the conditions specified in the Testing section. Further, EPA has identified certain toxicity and environmental fate testing described in the Pended Testing section of the Preamble to the Order that would help characterize the PMN substances. The Order does not require submission of the pended testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10816 (P–13–646 and P–13–648); 40 CFR 721.10817 (P–13–647, P–13–649, and P–13–679); and 40 CFR 721.10818 (P–13–678).

PMN Number P–13–951

Chemical name: Zinc carboxylate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a destructive use in the manufacture of coating materials and fuels. Based on SAR analysis of test data on analogous soluble zinc compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 3 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 3 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (OECD Test Guideline 23) be consulted to facilitate solubility in the test media.

CFR citation: 40 CFR 721.10819.

PMN Number P–14–364

Chemical name: Phenol, styrenated, reaction products with polyethylene glycol and 2-[(2-propen-1-yloxy)methyl]oxirane.

CAS number: 1539128–27–2.

Basis for action: The PMN states that the substance will be used as a reactive emulsifier for manufacturing aqueous emulsion polymers or alkyd resins, a dispersant for pigments in aqueous or solvent-based coatings, and an intermediate for production of related anionic dispersants. Based on SAR analysis of test data on analogous nonionic surfactant compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 170 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 170 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 170 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301B) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10820.

PMN Number P–14–382

Chemical name: Quaternary ammonium compounds, tri-C8–10-alkylmethyl, hydrogen sulfates (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a cleaning component for fuels. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed

manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10821.

PMN Number P–14–395

Chemical name: 1,2,3-Propanetriol, homopolymer, dodecanoate.

CAS number: 74504–64–6.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a detergent additive. Based on SAR analysis of test data on analogous nonionic surfactant compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 18 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 18 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 18 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301B) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (OECD Test Guideline 23) be consulted to facilitate solubility in the test media.

CFR citation: 40 CFR 721.10822.

PMN Number P–14–564

Chemical name: 2-Propenal, 3-[4-(1-methylethyl)phenyl]-.

CAS number: 6975–24–2.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate for the synthesis of fragrance compounds. Based on SAR analysis of test data on analogous vinyl/allyl aldehydes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 1 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10823.

PMN Number P–14–594

Chemical name: Brominated filtration residue (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a feed for a bromine recovery unit. Based on the physical/chemical properties of the PMN substance and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999)(FRL–6097–7). EPA estimates that the PMN substance will persist in the environment more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. There are also concerns for liver toxicity based on the brominated phenyl moiety. As described in the PMN notice, the PMN substance is not released to surface water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN and/or any use of the substance resulting in surface water releases may result in significant adverse health and environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of a partition coefficient (n-octanol/water) test (OPPTS Test Guideline 830.7570/OECD Test Guideline 117); a ready biodegradability test (OPPTS Test Guideline 835.3110/OECD Test Guideline 301); a fish bioconcentration factor (BCF) test (OPPTS Test Guideline 850.1730/(OECD Test Guideline 305); and a water solubility test (OECD Test Guideline 111) would help characterize the health and environmental effects of the PMN substance. Depending on the results of these tests, additional testing as identified in the PBT category may be recommended.

CFR citation: 40 CFR 721.10824.

PMN Numbers P–14–616 and P–14–617

Chemical names: Fatty acids reaction products with polyethylenepolyamine and naphthenic acids (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be in hydrocarbon processing applications. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface water, from uses other than as described in the PMNs, exceed releases from the uses described in the PMN. For the uses described in the PMN, environmental releases did not exceed 1 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as described in the PMNs could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early life-stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic

toxicity test (OPPTS Test Guidelines 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help to characterize the environmental effects of the PMN substances. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be consulted to facilitate solubility in the test media. The Agency prefers that the testing be completed on P–14–616.

CFR citation: 40 CFR 721.10825.

PMN Number P–14–625

Chemical name: Substituted aminoalkyl nitrile (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the use of the substance will be as a chemical intermediate. Based on SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 18 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 18 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 18 ppb may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010); an algal toxicity test (OCSPP Test Guideline 850.4500); and a ready biodegradability test (OECD Test Guideline 301B) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10826.

PMN Number P–14–640

Chemical name: Cyclooctadiene metal derivatives (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a synthetic intermediate. Based on test data on the analogous metal compounds, the EPA identified human health concerns regarding acute handling hazard from exposure to metal compounds. As described in the PMN, exposure is expected to be minimal for this use. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a synthetic intermediate or in any non-enclosed processes may result in significant adverse human health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day subchronic study (OPPTS Test Guideline 870.3100) in rats, by inhalation route, would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10827.

PMN Numbers P–14–792, P–14–793, and P–14–794

Chemical names: (P–14–792, Chemical A; P–14–793; and P–14–794) 1,2,3-Propanetriol, homopolymer, alkanoates (generic) and (P–14–792, Chemical B) Glycerides, alkanoate, mono-, di- and tri- (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as agricultural additives. Based on SAR analysis of test data on analogous non-ionic surfactants, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 53 ppb of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface water, from uses other than as described in the PMNs, exceed releases from the use described in the PMNs. For the use described in the PMNs, environmental releases did not exceed 53 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances other than as described in the PMNs could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guidelines 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help to characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10828 (P–14–792, Chemical A; P–14–792, Chemical B; P–14–793; and P–14–794)

PMN Number P–14–800

Chemical name: Xanthylium, x-[2-(alcoxycarbonyl)phenyl]-bis(alkylamino)-dimethyl-, x′-[x″-[hydroxy-x‴-[[[[hydroxy-x⁗-(phenyldiazenyl)-sulfo-2-naphthalenyl]amino]carbonyl]amino] sulfo-naphthalenyl]diazenyl]benzoate, sodium salt (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used in ink for ball point pens. Based on an analog of the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10829.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 9 of the 25 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR

provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit VI.).

In the other 16 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is July 7, 2015 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before June 8, 2015.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before June 8, 2015, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 9 of the 25 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of 21 of the 25 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates May 8, 2015 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for TSCA non-section 5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would

permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2014–0908.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection

techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this action.

This action is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 1, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10812	2070–0012
721.10813	2070–0012
721.10814	2070–0012
721.10815	2070–0012
721.10816	2070–0012
721.10817	2070–0012
721.10818	2070–0012
721.10819	2070–0012
721.10820	2070–0012
721.10821	2070–0012
721.10822	2070–0012
721.10823	2070–0012
721.10824	2070–0012

40 CFR citation	OMB control No.
721.10825	2070–0012
721.10826	2070–0012
721.10827	2070–0012
721.10828	2070–0012
721.10829	2070–0012

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PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10812 to subpart E to read as follows:

§ 721.10812 Alkylbenzene sulfonic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylbenzene sulfonic acid (PMN P–12–115) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance that have partitioned into oil or petroleum streams following use as an interfacial tension reducer for enhanced oil recovery applications.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f), (g)(3), (g)(4)(ii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any manufacturing, processing, or use of the PMN substance other than as a chemical intermediate to prepare an interfacial tension reducer for enhanced oil recovery.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N=4).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10813 to subpart E to read as follows:

§ 721.10813 Benzenesulfonic acid, dimethyl-, alkyl derivatives, sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenesulfonic acid, dimethyl-, alkyl derivatives, sodium salt (PMNs P–12–116 and P–13–568) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the PMN substance that have partitioned into oil or petroleum streams when used in enhanced oil recovery applications.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f), (g)(1) (corrosion to the eyes, mucous membranes, skin, and lungs), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), (g)(3), (g)(4)(ii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacturing, processing, or use of the PMN substance other than as an interfacial tension reducer for enhanced oil recovery or the confidential use as stated in the consent order for P–13–568) and § 721.80(q) (production volume limit as stated in the consent order for P–13–568).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N=4).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 6. Add § 721.10814 to subpart E to read as follows:

§ 721.10814 2-Propenoic acid, 3-phenyl-, zinc salt (2:1), (2E)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 3-phenyl-, zinc salt (2:1), (2E)- (PMN P–12–397; CAS No. 18957–59–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use of the PMN substance other than as a reinforcing additive in polyolefins.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10815 to subpart E to read as follows:

§ 721.10815 Fatty acids, satd. and unsatd alkyl-, esters with polyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, satd. and unsatd alkyl-, esters with polyol (PMN P–13–139) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use of the PMN substance other than as an ingredient in a multipurpose additive in gasoline to reduce friction in engines.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10816 to subpart E to read as follows:

§ 721.10816 Fluoroalkyl acrylate copolymer modified with polysiloxanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fluoroalkyl acrylate copolymer modified with polysiloxanes (PMNs P–13–646 and P–13–648) are subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substances is any manner or method of manufacture or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) are not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 9. Add § 721.10817 to subpart E to read as follows:

§ 721.10817 Fluoroalkyl acrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fluoroalkyl acrylate copolymer (PMNs P–13–647, P–13–649, and P–13–679) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substances is any manner or method of manufacture or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) are not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 10. Add § 721.10818 to subpart E to read as follows:

§ 721.10818 Fluoroalkyl methacrylate copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fluoroalkyl methacrylate copolymer (PMN P–13–678) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substance, the employer becomes aware that the substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 11. Add § 721.10819 to subpart E to read as follows:

§ 721.10819 Zinc carboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as zinc carboxylate (PMN P–13–951) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10820 to subpart E to read as follows:

§ 721.10820 Phenol, styrenated, reaction products with polyethylene glycol and 2-[(2-propen-1-yloxy)methyl]oxirane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, styrenated, reaction products with polyethylene glycol and 2-[(2-propen-1-yloxy)methyl]oxirane (PMN P–14–364; CAS No. 1539128–27–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=170).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10821 to subpart E to read as follows:

§ 721.10821 Quaternary ammonium compounds, tri-C8-10-alkylmethyl, hydrogen sulfates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as quaternary ammonium compounds, tri-C8-10-alkylmethyl, hydrogen sulfates (PMN P–14–382) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10822 to subpart E to read as follows:

§ 721.10822 1,2,3-Propanetriol, homopolymer, dodecanoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2,3-propanetriol, homopolymer, dodecanoate (PMN P–14–395; CAS Number 74504–64–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=18).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10823 to subpart E to read as follows:

§ 721.10823 2-Propenal, 3-[4-(1-methylethyl)phenyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenal, 3-[4-(1-methylethyl)phenyl]-(PMN P–14–564; CAS No. 6975–24–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10824 to subpart E to read as follows:

§ 721.10824 Brominated filtration residue (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated filtration residue (PMN P–14–594) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use of the PMN substance other than as a feed for bromine recovery unit.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

■ 17. Add § 721.10825 to subpart E to read as follows:

§ 721.10825 Fatty acids reaction products with polyethylenepolyamine and naphthenic acids (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acids reaction products with polyethylenepolyamine and naphthenic acids (PMNs P–14–616 and P–14–617) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 18. Add § 721.10826 to subpart E to read as follows:

§ 721.10826 Substituted aminoalkyl nitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted aminoalkyl nitrile (PMN P–14–625) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=18).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10827 to subpart E to read as follows:

§ 721.10827 Cyclooctadiene metal derivatives (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as cyclooctadiene metal derivatives (PMN P–14–640) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. A significant new use is any use in non-enclosed processes or any use other than as a synthetic intermediate.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10828 to subpart E to read as follows:

§ 721.10828 1,2,3-Propanetriol, homopolymer, alkanoates (generic) and Glycerides, alkanoate, mono-, di- and tri- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as 1,2,3-propanetriol, homopolymer, alkanoates (PMNs P–14–792, Chemical A; P–14–793; and P–14–794) and generically as glycerides, alkanoate, mono-, di- and tri- (PMN P–14–792, Chemical B) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 21. Add § 721.10829 to subpart E to read as follows:

§ 721.10829 Xanthylium, x-[2-(alcoxycarbonyl)phenyl]-bis(alkylamino)-dimethyl-, x′-[x″ -[hydroxy-x‴-[[[[hydroxy-x⁗-(phenyldiazenyl)-sulfo-2-naphthalenyl]amino]carbonyl]amino]sulfo-naphthalenyl]diazenyl]benzoate, sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as xanthylium, x-[2-(alcoxycarbonyl)phenyl]-bis(alkylamino)-dimethyl-, x′-[x″ -[hydroxy-x‴-[[[[hydroxy-x⁗-(phenyldiazenyl)-sulfo-2-naphthalenyl]amino]carbonyl]amino] sulfo-naphthalenyl]diazenyl]benzoate, sodium salt (PMN P–14–800) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2015–11166 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0910; FRL–9927–35–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Infrastructure Requirements for the 2010 Nitrogen Dioxide and 2012 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. PADEP made two separate SIP submittals addressing the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) NAAQS and the 2012 fine particular matter ($PM_{2.5}$) NAAQS. In this rulemaking action, EPA is approving, in accordance with the requirements of the CAA, the two infrastructure SIP submissions with the exception of some portions of the submittals addressing visibility protection.

DATES: This final rule is effective on June 8, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0910. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittals are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On February 6, 2015 (80 FR 6672), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania proposing approval of Pennsylvania's SIP submittals to satisfy several requirements of section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS.[1] In the NPR, EPA proposed approval of Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS for the following infrastructure elements in section 110(a)(2): (A), (B), (C), (D)(i)(II) (prevention of significant deterioration (PSD)), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's July 15, 2014 SIP submittals for the 2010 NO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS did not include any provisions addressing section 110(a)(2)(D)(i)(I) (interstate transport) or 110(a)(2)(I) (nonattainment plan requirements). Thus, EPA's NPR did not propose to approve the infrastructure SIP submittals for the 2010 NO_2 NAAQS or 2012 $PM_{2.5}$ NAAQS for the requirements in section 110(a)(2)(D)(i)(I) or 110(a)(2)(I). Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the CAA, and therefore Pennsylvania was not required to submit anything for this element by the 3-year submission deadline of section 110(a)(1) for either the 2010 NO_2 NAAQS or 2012 $PM_{2.5}$ NAAQS. The requirements of section 110(a)(2)(I) for these NAAQS will be addressed in a separate SIP process where appropriate. Section 110(a)(2)(D)(i)(I) pertains to interstate transport of emissions. EPA will take separate action for Pennsylvania concerning this element for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS. Finally, Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS did include provisions addressing the visibility protection element in section 110(a)(2)(D)(i)(II) of the CAA; however, EPA's NPR did not propose to approve any of Pennsylvania's SIP submittals for the requirements in section 110(a)(2)(D)(i)(II) for visibility protection. EPA's NPR stated we would take separate action on the visibility protection element of section 110(a)(2)(D)(i)(II) submitted as part of the July 15, 2014 SIP submittals. Thus, this rulemaking does not take any final action on the July 15, 2014 infrastructure SIP submittals for section 110(a)(2)(D)(i)(II) (visibility protection) for the 2010 NO_2 NAAQS or the 2012 $PM_{2.5}$ NAAQS.

In the NPR, EPA also proposed approval of Pennsylvania's July 15, 2014 SIP submittals for certain requirements of CAA section 110(a)(2) for the 2008 ozone and 2010 sulfur dioxide (SO_2) NAAQS. EPA will take separate final action on the proposed approval of Pennsylvania's infrastructure SIP submittals for the 2008 ozone and 2010 SO_2 NAAQS.

The rationale supporting EPA's approval of Pennsylvania's July 15, 2014 infrastructure SIP submittals for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS, which address certain requirements of CAA section 110(a)(2), was explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here.[2] The TSD is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0910. EPA received no adverse comments on our proposed approval of Pennsylvania's infrastructure SIP submittals which address certain requirements in section 110(a)(2) for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS as explained above.

II. Final Action

EPA is approving as a revision to the Pennsylvania SIP, Pennsylvania's July 15, 2014 infrastructure SIP submittals which provide the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II)(PSD),

[1] EPA's February 6, 2015 NPR also proposed approval of two other Pennsylvania SIP submittals dated July 15, 2014 which addressed certain requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS and the 2010 sulfur dioxide (SO_2) NAAQS. In this rulemaking action, EPA is not taking final action on the Pennsylvania SIP submittals for the 2008 ozone NAAQS or 2010 SO_2 NAAQS. EPA will take final rulemaking action on those SIP submittals in a separate action.

[2] The NPR also explained the scope of infrastructure SIPs in general and EPA's authority to act on specific elements of CAA section 110(a)(2) for a particular NAAQS in separate rulemaking actions.

(D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS. This rulemaking action does not include any rulemaking action on Pennsylvania's infrastructure SIP submittals for requirements in CAA section 110(a)(2)(D)(i)(I) (interstate transport) or (D)(i)(II) (visibility protection). EPA will address these requirements in section 110(a)(2)(D)(i)(I) and (D)(i)(II) (visibility protection) in separate actions. EPA will take final action on Pennsylvania's SIP submittals addressing infrastructure elements of CAA section 110(a)(2) for the 2008 ozone NAAQS and 2010 SO_2 NAAQS in a separate action. This rulemaking does not address requirements for section 110(a)(2)(I) for the 2010 NO_2 NAAQS or 2012 $PM_{2.5}$ NAAQS as those requirements are due on a separate schedule and will be addressed in separate actions where necessary.

III. Statutory and Executive Order Reviews

A. General Requirements

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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for 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 appropriate circuit by July 7, 2015. 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.

This action pertaining to Pennsylvania's section 110(a)(2) infrastructure elements for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS 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, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: April 21, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is 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.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding two entries for Section 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS and 2012 $PM_{2.5}$ NAAQS at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS.	Statewide	7/15/14	5/8/15 [*Insert* ***Federal Register*** *citation*].	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	7/15/14	5/8/15 [*Insert* ***Federal Register*** *citation*].	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

* * * * *

[FR Doc. 2015–11033 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0135; FRL–9927–17–OAR]

RIN 2060–AS36

Partial Withdrawal of Technical Amendments Related to: Tier 3 Motor Vehicle Fuel and Quality Assurance Plan Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment on certain elements of the Tier 3 Amendments direct final rule published on February 19, 2015, we are withdrawing those elements of the direct final rule. EPA intends to consider the comments received and proceed with a new final rule for the withdrawn elements. The remaining elements will go into effect pursuant to the direct final rule.

DATES: Effective May 5, 2015, EPA withdraws the amendments to 40 CFR 80.1453, 80.1616, and 80.1621 published at 80 FR 9078 on February 19, 2015.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734–214–4131; email address: *MacAllister.Julia@epa.gov.*

SUPPLEMENTARY INFORMATION: We stated in the Tier 3 Technical Amendments direct final rule published on February 19, 2015 (80 FR 9078) that if we received adverse comment by April 6, 2015, as to any part of the direct final rule, those parts would be withdrawn by publishing a timely notice in the **Federal Register**. Because EPA received adverse comment, we are withdrawing the amendments that were the subject of these adverse comments and they will not take effect. Three specific provisions are being withdrawn, as described below.

First, 40 CFR 80.1453: In the Renewable Fuel Standard (RFS) Quality Assurance Program (QAP) Rule (79 FR 42078, July 18, 2014), EPA added additional product transfer document (PTD) requirements for renewable fuels that informed parties that took ownership of the renewable fuel that they would need to (a) use the fuel as it was intended, *i.e.,* for transportation use; and, (b) incur a renewable volume obligation (RVO) if the fuel was exported. Shortly after publication of the QAP final rule, we received questions on whether these PTD requirements would apply downstream to the end users, including residential heating oil owners and people filling up their fuel tanks at fuel retail stations. EPA provides downstream end user exemptions to the PTD requirements in other fuels programs, and the direct final rule included similar exemptions for RFS PTD requirements. The words ''or custody'' were inadvertently added to the RFS PTD requirements and we received several comments pointing out that applying the PTD requirements to the transfer of custody of renewable fuels would be costly to industry and not beneficial to the RFS program. In this action we are withdrawing all of the changes to 40 CFR 80.1453.

Second, 40 CFR 80.1616: The direct final rule included some clarifying language for when credits expire and are reported. We received a comment advocating for small refiners and small volume refineries to be allowed to use credits past January 1, 2020—to effectively receive a small refiner- and small volume refinery-specific period of lead time before these parties must comply with the Tier 3 sulfur standards. Although it is not clear whether this comment is germane to the provisions of the direct final rule, in light of the short time frame for withdrawal of the direct final rule, we have decided to treat this as an adverse comment on the amended rulemaking provisions and we therefore are withdrawing the proposed changes to 40 CFR 80.1616.

Third, 40 CFR 80.1621: Following publication of the Tier 3 Final Rule (79 FR 23414, April 28, 2014) we were contacted by some refiners to clarify if/when small volume refineries could be disqualified, because there was language inadvertently deleted from the regulatory text as part of the Tier 3 final rule. In re-inserting this text in the direct final rule, we clarified that small volume refinery disqualification was akin to small refiner disqualification. We received adverse comment raising the issue that the new wording is confusing because it does not explicitly state exactly when and under which circumstances that disqualification could occur, and also that the term ''small refinery'' was used instead of the correct term ''small volume refinery''. In this action we are withdrawing all changes to 40 CFR 80.1621.

EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. EPA intends to consider the comments received and proceed with a new final rule. As stated in the parallel proposal, EPA does not plan to institute a second comment period for the proposed action with respect to the provisions that are withdrawn by this notice.

The amendments for which we did not receive adverse comment are not being withdrawn and will become

effective on May 5, 2015, as provided in the February 19, 2015 direct final rule.

Accordingly, the amendments to 40 CFR 80.1453, 80.1616 and 80.1621 on February 19, 2015 (80 FR 9078), are withdrawn as of May 5, 2015.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 30, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–10487 Filed 5–6–15; 4:15 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 86

Grants for Education Programs in Occupational Safety and Health

CFR Correction

■ In Title 42 of the Code of Federal Regulations, Parts 1 to 399, revised as of October 1, 2014, on page 668, in § 86.33, in paragraph (b), remove the term ''068''.

[FR Doc. 2015–11141 Filed 5–7–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

RIN 0906–AB05

Organ Procurement and Transplantation: Implementation of the HIV Organ Policy Equity Act

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the National Organ Transplant Act of 1984, as amended, (NOTA) pursuant to statutory requirements of the HIV Organ Policy Equity Act (HOPE Act), enacted in 2013. In accordance with the mandates of the HOPE Act, this regulation removes the current regulatory provision that requires the Organ Procurement Transplantation Network (OPTN) to adopt and use standards for preventing the acquisition of organs from individuals known to be infected with human immunodeficiency virus (HIV).

In its place, this regulation includes new requirements that organs from individuals infected with HIV may be transplanted only into individuals who are infected with HIV before receiving such organs and who are participating in clinical research approved by an institutional review board, as provided by regulation. The only exception to this requirement of participation in such clinical research is if the Secretary publishes a determination in the future that participation in such clinical research, as a requirement for transplants of organs from individuals infected with HIV, is no longer warranted.

In addition, this regulatory change establishes that OPTN standards must ensure that any HIV-infected transplant recipients are participating in clinical research in accordance with the research criteria to be published by the Secretary. Alternately, if and when the Secretary determines that participation in such clinical research should no longer be a requirement for transplants with organs from donors infected with HIV to individuals infected with HIV, the regulation mandates that the OPTN adopt and use standards of quality, as directed by the Secretary, consistent with the law and in a way that ensures the changes will not reduce the safety of organ transplantation.

DATES: This final rule is effective June 8, 2015.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 8W37, Rockville, MD 20857; or by telephone (301) 443–7577.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration's (HRSA), Healthcare Systems Bureau (HSB), Division of Transplantation (DoT) is responsible for overseeing the operation of the nation's Organ Procurement and Transplantation Network (OPTN), which has responsibilities including the equitable allocation of donor organs for transplantation. The allocation of organs is guided by organ allocation policies developed by the OPTN in accordance with the regulations governing the operation of the OPTN (sometimes referred to as the ''OPTN final rule'' and herein referred to as ''OPTN regulations'') (42 CFR part 121). The OPTN is also charged with developing policies on many subjects, including standards of quality pertaining to organs procured for use in transplantation. In addition to the efficient and effective allocation of donor organs through the OPTN, the Secretary also supports efforts to increase the supply of donor organs made available through transplantation.

II. Summary of the HOPE Act

Prior to the enactment of the HOPE Act, Public Law 113–51 (November 21, 2013), NOTA required the OPTN to adopt and use standards of quality for preventing the acquisition of organs from individuals known to be infected with HIV. This requirement was further incorporated into regulation at 42 CFR 121.6(b). Thus, OPTN members were prohibited from transplanting organs from individuals known to be infected with HIV into patients (including patients infected with HIV).

The HOPE Act made an important change with respect to the transplantation of organs from individuals infected with HIV. Pursuant to the HOPE Act, organs from individuals infected with HIV may be transplanted so long as two sets of requirements are satisfied. First, organs from individuals infected with HIV may be transplanted only into individuals who were infected with HIV prior to receiving such an organ.

Second, transplants from individuals infected with HIV are subject to one of two oversight frameworks. Specifically, under the initial framework envisioned by the HOPE Act, all recipients of organs from individuals infected with HIV must be participating in clinical research approved by an institutional review board under research criteria to be published by the Secretary as described in the HOPE Act and the standards of quality implemented by the OPTN pursuant to the HOPE Act. Based on this change, all transplant centers conducting such clinical research will be required to comply with research criteria published by the Secretary under subsection (a) of section 377E of the Public Health Service Act, as amended. Alternately, if the Secretary determines that participation in such clinical research is no longer warranted as a requirement for transplants of organs from individuals infected with HIV, the Secretary will publish such a determination. The Secretary must then, consistent with the HOPE Act, direct the OPTN to revise its standards, consistent

with applicable law, in a way to ensure that the changes will not reduce the safety of organ transplantation. Such a direction may only occur, if at all, after the Secretary reviews the results of scientific research in conjunction with the OPTN to determine whether the results warrant revision of the standards of quality with respect to specific issues identified in the HOPE Act.

As noted above, the HOPE Act directs the Secretary to develop and publish criteria for the conduct of research relating to transplantation of organs from donors infected with HIV into individuals who are infected with HIV before receiving an HIV-infected organ. These research criteria will be published in a separate document and public comments will be solicited on such research criteria.

The HOPE Act also requires the OPTN to revise standards of quality for the acquisition and transportation of donated HIV-infected organs to the extent determined necessary by the Secretary to allow the conduct of research in accordance with the research criteria published by the Secretary (unless and until such time that the Secretary publishes a determination that participation in such clinical research is no longer warranted for transplants involving organs from donors infected with HIV).

Consistent with these directives, the HOPE Act directs the Secretary to revise current regulations (specifically, 42 CFR 121.6) that direct the OPTN to adopt and use standards for preventing the acquisition of organs from individuals infected with HIV, which effectively prevent the conduct of research relating to the transplantation of organs procured from individuals infected with HIV into recipients infected with HIV. The HOPE Act mandates that such regulatory revisions are to be made not later than two years after the date of enactment of the HOPE Act. That two year period will end on November 21, 2015. The Department is issuing this final rule under that statutory directive.

III. Summary of This Final Rule

The Department issues this final rule to fulfill the HOPE Act's mandate that the Secretary amend 42 CFR part 121 to permit the conduct of research involving the transplantation of organs from individuals infected with HIV into persons who are infected with HIV. This final rule removes the current regulatory prohibition against such transplants and makes clear that HIV-infected transplants may occur provided all of the HOPE Act's requirements are satisfied.

Although the HOPE Act also provides the Secretary with discretion to determine what criteria should apply to the conduct of such research, the Secretary is not promulgating such research criteria as part of this regulation. As noted above, the Secretary will publish such research criteria in a separate publication. The purpose of this regulation is to modify the regulations governing the operation of the OPTN to make such regulations consistent with the framework set forth in the HOPE Act.

Once this regulation is effective, the OPTN regulations will provide that organs from individuals infected with HIV may be transplanted only into individuals who are infected with HIV before receiving such organ(s). Thus, the OPTN final rule will not permit the transplantation of organs from individuals infected with HIV into individuals who are not infected with HIV. In addition, organs from individuals infected with HIV may only be transplanted into recipients who are participating in clinical research approved by an institutional review board, as defined in 45 CFR part 46, under the forthcoming research criteria to be published by the Secretary until such time that the Secretary publishes a determination that participation in such clinical research, as a requirement for transplants of organs from individuals infected with HIV, is no longer warranted. If the Secretary publishes such a determination, that transplants of organs from individuals infected with HIV can occur outside of the Secretary's research criteria, she will do so using appropriate procedures (*e.g.,* notice and comment rulemaking under the Administrative Procedure Act unless inapplicable or unless an exception applies). At that time, and as outlined in 42 CFR 121.6(b)(3), as added by this final rule, the OPTN must adopt and use standards of quality with respect to organs infected with HIV as directed by the Secretary, consistent with the applicable statutory authority (42 U.S.C. 274), and in a way that ensures the changes will not reduce the net safety of organ transplantation. The Secretary may also determine that further changes to the OPTN regulations are warranted if and when she determines that transplants of organs from individuals infected with HIV need not be conducted in accordance with the research criteria developed under the HOPE Act. The Secretary may amend the OPTN regulations and transplant centers conducting transplants with organs from donors infected with HIV into recipients with HIV will be obliged to comply with any new regulatory provisions.

IV. Explanation of Final Rule Without Notice and Comment

In accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), agencies are permitted to waive the use of notice and comment procedures in issuing regulations when such agencies, for good cause, find that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest and when agencies incorporate their findings and a brief explanation of their rationale in such regulations. The amendment to 42 CFR 121.6 made by this regulation is required by the HOPE Act. 42 U.S.C. 274f–5(b)(2). Because the changes made by this rule directly implement changes to the governing statute made by the HOPE Act, and because the Secretary is not undertaking discretionary rulemaking concerning the OPTN (but is instead directly following mandated changes in the law), the Secretary has determined, under 5 U.S.C. 553, that it is unnecessary and impracticable to follow proposed rulemaking procedures in this instance.

Thus, the Secretary is waiving the public notice and comment procedures in the interest of implementing the changes set forth in the HOPE Act, to enable persons infected with HIV to receive organs from individuals infected with HIV as long as all of the requirements set forth in the HOPE Act are satisfied and to enable the OPTN to revise its standards of quality, consistent with the HOPE Act.

V. Economic and Regulatory Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations require special analysis if they are found to be ''significant'' because of their cost, adverse effects on the economy, inconsistency with other agency actions, budgetary impact, or the raising of novel legal or policy issues. In addition, the Regulatory Flexibility Act of 1980 (RFA) requires that agencies analyze regulatory proposals to determine whether they create a significant economic impact on a substantial number of small entities. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options. ''Small entity'' is defined in the RFA as ''having the same meaning as the terms 'small business,' 'small

organization,' and 'small governmental jurisdiction.' ''

The Secretary has determined that minimal resources are required to implement the requirements in this rule because the initial phase of implementation, after the Secretary develops research criteria, will be the conduct of research involving transplants of organs from HIV-infected donors into HIV-infected recipients. As such, the change in standards of quality will initially only impact Organ Procurement Organizations and transplant hospitals choosing to enroll patients in research protocols. In addition, the number of HIV-infected transplants, and the number of institutions performing HIV-infected transplants, will be small. Cost and burden estimates refer to the research phase of implementation only. Should the Secretary determine, after reviewing the results of scientific research, that the standards of quality referenced above should be modified for the entire transplant system, the Secretary will, in accordance with the HOPE Act, direct the OPTN to revise such standards, consistent with applicable law and in a way that ensures the changes will not reduce the safety of organ transplantation. At that time, the Secretary may revise the Department's impact analysis. Therefore, in accordance with the RFA and the Small Business Regulatory Flexibility Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary also has determined that this rule does not meet the criteria for an economically significant rule as defined by Executive Order 12866 and will have no major effect on the economy or Federal expenditures. The Department has determined that this rule is not a major rule within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995. This rule is not being treated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The provisions of this rule will not affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. As stated above, this rule modifies the regulations governing the OPTN based on legal authority.

VI. Impact of the New Rule

This rule has the effect of fulfilling the HOPE Act's statutory mandate requiring the Secretary to amend OPTN regulations to permit the conduct of research involving the transplantation of organs from individuals infected with HIV into persons who are infected with HIV. This final rule removes the current regulatory prohibition against HIV-infected transplants and makes clear that HIV-infected transplants may occur so long as all of the requirements described in the HOPE Act are satisfied. OPTN members will be required to comply with requirements set forth in the OPTN final rule, including those pertaining to data submission as set forth in 42 CFR part 121, as applied to organs recovered from HIV-infected individuals.

VII. Paperwork Reduction Act of 1995

The Department has determined that at this time, the amendment described in this rule imposes minimal additional data collection requirements beyond those already imposed by current regulations, which have been approved by the Office of Management and Budget. The current data collection requirements in the OPTN final rule approved by the OMB under the Paperwork Reduction Act of 1995 and assigned control numbers OMB No. 0915–0157 (for organ donors, candidates, and recipients) and OMB No. 0915–0184 (for OPTN membership application data) will be only slightly impacted by this rule. Current OPTN forms already include information about HIV testing and a donor's HIV status. HRSA anticipates that OPTN candidate registration forms will be updated in the future to include a question regarding the candidate's participation in research studies conducted under the authority of the Act. In addition, certain OMB-approved forms will be updated in the future to include results of HIV blood tests using Nucleic Acid Test (NAT) methodology. However, the inclusion of this information is not based upon the regulatory changes made by the HOPE Act, but is instead responsive to revised Public Health Service guidelines published in 2013. The burden for this data collection is anticipated to be small given the projected number of research participants (<1% of annual transplants at the outset). Finally, it is possible that the OPTN will conduct additional data collections to implement the changes in law created by the Act. For example, when the Secretary publishes research criteria under the Act, it is possible that such criteria will make recommendations concerning data that would be helpful for the Secretary to review in assessing research on transplants involving organs from individuals infected with HIV. In that event, the Department may choose to incorporate some of those data elements into OPTN forms and data collection. Alternately, the OPTN may determine independently that it wishes to capture additional data with respect to OPTN members participating in research under the HOPE Act. This rule reflects the Department's current assessment as to the likely data collections that will be imposed by virtue of this regulation. If, in the future, the Department or the OPTN determine that additional data should be collected in implementation of this regulation, the Department will notify the public of any proposed data collections and solicit comments consistent with the Paperwork Reduction Act.

The estimated number of respondents included in the table below is based on the current number of OPTN transplant hospital members. The number of transplant hospital members will vary as new members are approved for OPTN membership, and/or members relinquish their OPTN membership when a member ceases activity related to organ transplantation. As such, while the total burden hours may change slightly from the estimate below, the table below is an accurate representation of the current estimated annual reporting burden.

The estimated annual reporting burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours (cost)
Heart Candidate Registration	133	1	133	0.08	11 ($286)

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours (cost)
Lung Candidate Registration	68	1	68	0.08	5 ($130)
Heart/Lung Candidate Registration	67	1	67	0.08	5 ($130)
Kidney Candidate Registration	236	1	236	0.08	19 ($494)
Pancreas Candidate Registration	137	1	137	0.08	11 ($286)
Kidney/Pancreas Candidate Registration	137	1	137	0.08	11 ($286)
Pancreas Islet Candidate Registration	20	1	20	0.08	2 ($52)
Liver Candidate Registration	139	1	139	0.08	11 ($286)
Intestine Candidate Registration	41	1	41	0.08	3 ($78)
Total	978	9	978	0.72	78 ($2,028)

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: April 21, 2015.

James Macrae,

Acting Administrator, Health Resources and Services Administration.

Approved: May 1, 2015.

Sylvia M. Burwell,

Secretary.

Therefore, for the reasons stated in the preamble, the Department of Health and Human Services amends 42 CFR part 121 as follows:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: Sections 215, 371–76, and 377E of the Public Health Service Act (42 U.S.C. 216, 273–274d, 274f–5); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8, and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

■ 2. In § 121.6, revise paragraph (b) to read as follows:

§ 121.6 Organ procurement.

* * * * *

(b) *HIV.* (1) Organs from individuals infected with human immunodeficiency virus (HIV) may be transplanted only into individuals who—

(i) Are infected with HIV before receiving such organ(s); and

(ii)(A) Are participating in clinical research approved by an institutional review board, as defined in 45 CFR part 46, under the research criteria published by the Secretary under subsection (a) of section 377E of the Public Health Service Act, as amended; or

(B) The Secretary has published, through appropriate procedures, a determination under section 377E(c) of the Public Health Service Act, as amended, that participation in such clinical research, as a requirement for transplants of organs from individuals infected with HIV, is no longer warranted.

(2) Except as provided in paragraph (b)(3) of this section, the OPTN shall adopt and use standards of quality with respect to organs from individuals infected with HIV to the extent the Secretary determines necessary to allow the conduct of research in accordance with the criteria described in paragraph (b)(1)(ii)(A) of this section.

(3) If the Secretary has determined under paragraph (b)(1)(ii)(B) of this section that participation in clinical research is no longer warranted as a requirement for transplants of organs from individuals infected with HIV, the OPTN shall adopt and use standards of quality with respect to organs from individuals infected with HIV as directed by the Secretary, consistent with 42 U.S.C. 274, and in a way that ensures the changes will not reduce the safety of organ transplantation.

* * * * *

[FR Doc. 2015–11048 Filed 5–7–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

[Docket No. FWS–HQ–BPHR–2014–0028; FXGO16600954000–134–FF09B30000]

RIN 1018–BA52

Addresses of Headquarters Offices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: On July 29, 2014, the U.S. Fish and Wildlife Service (we) published a final rule to update the addresses of our headquarters offices in our regulations. We inadvertently omitted two necessary address changes. We make those changes in this document.

DATES: Effective May 8, 2015.

FOR FURTHER INFORMATION CONTACT: Anissa Craghead, 703–358–2445.

SUPPLEMENTARY INFORMATION: We relocated our headquarters offices from Arlington, Virginia, to Falls Church, Virginia, on July 28, 2014. To ensure regulated entities and the general public have accurate contact information for the Service's offices, on July 29, 2014, we published a final rule (79 FR 43961) to update our headquarters addresses throughout our regulations. We inadvertently omitted two necessary address changes in the regulations at 50 CFR 10.21. We make those changes in this document.

List of Subjects in 50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 10 of subchapter A of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 10—GENERAL PROVISIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 668a–d, 703–712, 742a–j–l, 1361–1384, 1401–1407, 1531–1543, 3371–3378; 18 U.S.C. 42; 19 U.S.C. 1202.

■ 2. Amend § 10.21 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 10.21 Director.

(a) Mail forwarded to the Director for law enforcement purposes should be addressed to Chief, Office of Law Enforcement, at the address provided at 50 CFR 2.1(b).

(b) Mail sent to the Director regarding permits for the Convention on International Trade in Endangered Species of Wild Fauna and Fauna (CITES), injurious wildlife, Wild Bird

Conservation Act species, international movement of all ESA-listed endangered or threatened species, and scientific research on, exhibition of, or interstate commerce in nonnative ESA-listed endangered and threatened species should be addressed to: Director, U.S. Fish and Wildlife Service, (Attention: Division of Management Authority), at the address provided for the Division of Management Authority at 50 CFR 2.1(b). * * *

Dated: May 4, 2015.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2015–11084 Filed 5–7–15; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 80, No. 89
Friday, May 8, 2015

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–14–0089]

Blueberry Promotion, Research and Information Order; Expanding the Membership of the U.S. Highbush Blueberry Council and Other Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on expanding the membership of the U.S. Highbush Blueberry Council (Council) under the Blueberry Promotion, Research and Information Order (Order). The Council administers the Order with oversight by the U.S. Department of Agriculture (USDA). This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. This proposal would also add eligibility requirements for the public member, clarify the Council's nomination procedures and its ability to serve the diversity of the industry, and increase the number of members needed for a quorum. This proposal also invites comments on prescribing late payment and interest charges for past due assessments. These changes would help facilitate program administration. All of these actions were unanimously recommended by the Council.

DATES: Comments must be received by July 7, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632–8848; facsimile (202) 205–2800; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action 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 would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on expanding the membership of the Council under the Order. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. This proposal would also add eligibility requirements for the public member, clarify the Council's nomination procedures and its ability to serve the diversity of the industry, and increase the number of members needed for a quorum. This proposal also invites

comments on prescribing late payment and interest charges on past due assessments. These changes would help facilitate program administration. All of these actions were unanimously recommended by the Council at its meeting on October 3, 2014.

Expanding the Council's Membership

Section 1218.40(a) of the Order currently specifies that the Council be composed of no more than 16 members and alternates appointed by the Secretary of Agriculture (Secretary). Ten of the 16 members and alternates are producers. One producer member and alternate are from each of the following regions within the United States: Region #1 Western Region; Region #2 Midwest Region; Region #3 Northeast Region; and Region #4 Southern Region. One producer member and alternate are from each of the top six blueberry producing states, based upon the average of the total tons produced over the previous three years. Currently, these states include Michigan, Oregon, Washington, Georgia, New Jersey, and California. Average tonnage is based upon production and assessment figures generated by the Council.

Of the remaining six Council members and alternates, three members and alternates are importers. One member and alternate must be an exporter, defined in section 1218.40 as a blueberry producer currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average (currently Chile). One member and alternate must be a first handler, defined in section 1218.40 as a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries. Finally, one member and alternate must represent the public.

Section 1218.40(b) of the Order specifies that, at least once every five years, the Council will review the geographical distribution of the production of blueberries in the United States and the quantity of imports. The review is conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that its membership be altered to reflect changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

Council Recommendation

Adding Two State Producer Positions

The Council met on October 3, 2014, and reviewed domestic production and assessment data for the pasts three years (2011–2013). This data for the top blueberry producing states is summarized in Table 1 below.

TABLE 1—PRODUCTION[1] AND ASSESSMENT[2] FIGURES FROM 2011–2013

State	2011		2012		2013		3-year average	
	Tons	Assessments paid	Tons	Assessments paid	Tons	Assessments paid	Tons	Assessments paid
Michigan	36,000	$434,775	43,500	$528,782	57,500	$668,678	45,500	$544,075
Oregon	32,750	363,726	36,000	433,326	44,750	517,579	37,833	438,210
Washington	30,500	319,635	35,000	334,242	40,800	361,595	35,433	338,491
Georgia	32,500	343,694	38,500	347,666	34,000	359,681	35,000	350,347
New Jersey	31,000	321,123	27,000	285,502	25,080	288,578	27,693	298,401
California	21,050	286,696	20,450	301,212	25,700	366,494	22,400	318,134
North Carolina	18,500	189,061	20,250	198,090	21,200	190,904	19,983	192,685
Florida	11,700	131,538	9,050	88,246	10,750	124,576	10,500	114,787
Mississippi	5,250	27,096	4,500	28,610	3,650	17,566	4,467	24,424
Indiana	800	3,007	750	3,160	1,600	7,751	1,050	4,639

As shown in Table 1, Michigan, Oregon, Washington, Georgia, New Jersey, California, North Carolina, and Florida, respectively, were the top eight highbush blueberry producing states based on the 3-year average of both production and assessments paid from 2011–2013. Mississippi and Indiana, respectively, were the ninth and tenth highest blueberry producing states from 2011–2013. Blueberry production in Florida, the smallest producer of the top eight producing states, was more than double that of Mississippi.

Since the Council's inception in 2001 and continuing until 2006, there were five state positions on the Council; producers from Michigan, Oregon, Georgia, New Jersey, and North Carolina held those five positions. In 2006, a sixth state position was added to the Council, with the State of Washington earning a seat (71 FR 44553; August 7, 2006). Production shifted in the coming years, and by 2014, California became the sixth top blueberry producing state and earned a position on the Council, with its 3-year average production surpassing that of North Carolina.

After reviewing state production data, the Council recommended revising its membership so that one producer member and alternate from each of the top eight producing blueberry states have seats on the Council, based upon the average of the total tons produced over the previous 3 years. Thus, the number of state positions on the Council would be increased from six to eight. Based upon recent production figures, this would allow North Carolina and Florida to each have a state member and alternate seat on the Council. Section 1218.40(a)(2) would be revised accordingly.

Adding One Importer and One Exporter Position

The Council also reviewed import data and compared it to domestic data. Table 2 below shows the domestic (U.S.) production figures and quantity of imports from 2011–2013 as well as assessments paid for domestic and imported blueberries for those years. The table also shows the 3-year average of domestic production, imports and assessments paid for 2011–2013.

[1] Noncitrus Fruits and Nuts 2013 Summary, July 2014, USDA, National Agricultural Statistics Service, p. 34.

[2] Council assessment records 2011–2013.

TABLE 2—U.S.[3] AND IMPORT[4] QUANTITIES AND ASSESSMENT[5] DATA FROM 2011–2013

Year	Domestic (U.S.) assessments	Import assessments	U.S. Crop (tons)	Imports (tons)
2011	$2,151,682	$1,525,936	221,600	124,549
2012	2,434,646	1,601,966	236,700	132,133
2013	2,577,953	1,795,164	265,600	151,005
3-Year Average	2,387,177	1,641,022	241,303	135,896
Percent of Total	59%	41%	64%	36%

As shown in Table 2, the quantity of imported blueberries as well as assessments paid by importers has increased from 2011–2013. Based upon a 3-year average of total assessments paid under the program, domestic blueberries account for 59 percent of assessments paid and imports account for 41 percent of assessments paid. Additionally, based on a 3-year average of the total tonnage covered under the program, domestic production accounts for 64 percent of the tonnage and imports account for 36 percent of the tonnage.

The Council also reviewed import data by country. Table 3 below shows the quantity of imports by country from 2011–2013 as well as the 3-year average.

TABLE 3—QUANTITY OF BLUEBERRIES FROM FOREIGN PRODUCTION AREAS 2011–2013[6]

Foreign blueberry production areas shipping into the United States	Quantity (tons)			
	2011	2012	2013	3-Year average
Chile	76,889	69,754	84,673	77,105
Canada	30,374	70,767	48,149	49,763
Argentina	9,001	14,830	13,813	12,548

As shown in Table 3, Chile and Canada, respectively, were the top two foreign production areas shipping blueberries into the United States from 2011–2013. Argentina has been the third top foreign production area shipping blueberries into the United States, although the quantity of Argentinian imports is much lower than the quantity of blueberries from Chile and Canada.

Regarding membership on the Council, representatives from Canada were the exporter member and alternate from the time of the Council's inception and continuing through 2009. Since 2010, representatives from Chile have been the exporter member and alternate on the Council.

Upon reviewing import data, the Council recommended adding one importer member and one alternate to its membership. This would increase the number of importer positions from three to four. The Council also recommended adding one exporter member and one alternate to its membership to represent foreign producers currently shipping blueberries into the United States from the second largest foreign blueberry production area, based on a 3-year average. This would increase the number of exporter positions from one to two, allowing exporters from both Chile and Canada to be represented on the Council. Section 1218.40(a) of the Order is proposed to be amended accordingly.

Thus, the number of Council members would increase from 16 to 20. Of the 20 members, 12 would be domestic producers, 4 would be importers, 2 would be exporters, and 1 each would be a handler and public member. Of the 18 Council members representing domestic producers, importers and exporters, 66.7 percent would represent the domestic industry and 33.3 percent of the Council would represent imports or foreign production. This would realign the Council's membership to better reflect the geographic distribution of domestic and imported blueberries.

Other Changes

Public Member Eligibility

The Council reviewed other Order provisions regarding its membership and operations. The Council recommended revising paragraph (a)(6) of section 1218.40 to clarify eligibility requirements for the public member and alternate member positions. Specifically, the Council recommended that the public member and alternate not be a blueberry producer, handler, importer, exporter or have a financial interest in the production, sales, marketing or distribution of blueberries.

Diversity

The Council also recommended adding language to the Order to clarify its ability to serve the diversity of the industry. The Council recommended adding a new paragraph (c) to section 1218.40 to specify that, when the industry makes recommendations for nominees to serve on the Council, it should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Council take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

Nominations and Appointments

The Council recommended minor revisions to section 1218.41 of the Order regarding nominations and appointments. The procedures to nominate state and regional producers, as well as importers, exporters, first handlers, and public members would

[3] Noncitrus Fruits and Nuts, p. 9.

[4] U.S. Customs and Border Protection data 2011–2013.

[5] Council financial audit records 2011–2013.

[6] Customs data 2011–2013.

not change. The section would merely be revised to add clarity regarding the process for nominating members in states with and without a state blueberry commission or marketing order.

The Council also recommended adding language to section 1218.41 to expand the number of nominees submitted to the Secretary for consideration. Paragraph (a) of section 1218.41 currently provides that, when a state has a blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees must be recommended to the Secretary for each member and each alternate position. The Council recommended that other qualified persons who are interested in serving in the respective state positions but are not nominated by their State marketing order or commission be designated by the State organization and/or Council as additional nominees for consideration by the Secretary. Section 1218.41(a) would be revised accordingly.

Likewise, paragraph (d) of section 1218.41 currently provides that nominations for the importer, exporter, first handler, and public member positions be made by the Council. Two nominees for each member and each alternate position are submitted to the Secretary for consideration. The Council recommended that other qualified persons who are interested in serving in these positions but are not recommended by the Council be designated by the Council as additional nominees for consideration by the Secretary. The current paragraph (d) in section 1218.41 would be modified accordingly and would become paragraph (c).

The Council also recommended adding a new paragraph (d) to section 1218.41 to specify that producer, handler and importer nominees must be in compliance with the Order's provisions regarding the payment of assessments and filing of reports. This would help ensure that only persons in compliance with the Order's obligations serve on the Council. Further, this section would clarify that producer and importer nominees must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually. This would bring the Order in line with how the program has been administered since its inception. Section 1218.41 is proposed to be revised accordingly.

Council Procedures

The Council recommended revisions to section 1218.45 regarding procedures. First, the Council recommended increasing the number of members needed for a quorum. Paragraph (a) of section 1218.45 currently specifies that nine members are needed for a quorum, which is a majority of the current 16-member Council. Increasing the number of Council members to 20 warrants increasing the number members needed for a quorum to 11, which would be a majority of the proposed 20-member Council.

The Council also recommended adding flexibility to its procedures so that members participating in Council meetings may cast votes on issues either in person or by electronic or other means as deemed appropriate. Specifically, a new paragraph (f) would be added to section 1218.45 to specify that all votes at meetings of the Council and committees may be cast in person or by electronic voting or other means as the Council and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes.

Past Due Assessments

The Order specifies that the funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments and from other funds available to the Council. First handlers are responsible for collecting and submitting reports and producer assessments to the Council. Handlers must also maintain records necessary to verify their reports. Importers are responsible for paying assessments to the Council on highbush blueberries imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments.

Section 1218.52(e) of the Order specifies that all assessment payments and reports must be submitted to the office of the Council. Assessments on imported blueberries are collected by Customs prior to entry into the United States. Assessments on domestic blueberries for a crop year must be received by the Council no later than November 30 of that year. A late payment charge shall be imposed on any handler who fails to remit to the Council, the total amount for which any such handler is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest must be prescribed in regulations issued by the Secretary.

Assessment funds are used for research and promotion activities that are intended to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time may reap the benefits of Council programs at the expense of others. In addition, they may utilize funds for their own use that should otherwise be paid to the Council to finance Council programs.

The Council recommended prescribing rates of late payment and interest charges for past due assessments in the Order's regulations. A late payment charge would be imposed upon handlers who fail to pay their assessments to the Council within 30 calendar days of the date when assessments are due. This one-time late payment charge would be 5 percent of the assessments due before interest charges have accrued.

Additionally, interest at a rate of 1 percent per month on the outstanding balance, including any late payment and accrued interest, would be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest would continue to accrue monthly until the outstanding balance is paid to the Council.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for provisions implementing the blueberry Order, and a new section 1218.520 would be added to Subpart C. Late payment charges and interest on past due assessments are not applicable for assessments on imported blueberries because the assessments are collected by Customs at the time of entry.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13

CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $7 million.

There are approximately 2,000 domestic producers, 80 first handlers and 200 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2013, $715,958,000,[7] by the number of producers (2,000) yields an average annual producer revenue estimate of $357,979. It is estimated that in 2013, about 60 percent of the first handlers shipped under $7 million worth of highbush blueberries. Based on 2013 Customs data, it is estimated that almost 90 percent of the importers shipped under $7 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities. We do not have information concerning the number of exporters and their size. Comments providing any information or data concerning exporters are requested.

Regarding value of the commodity, as mentioned above, based on 2013 NASS data, the value of the domestic highbush blueberry crop was about $716 million. According to Customs data, the value of 2013 imports was about $563 million.

This proposal invites comments on amending sections 1218.40, 1218.41 and 1218.45 of the Order regarding Council membership, nominations, and procedures, respectively. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This proposal would increase the number of Council members from 16 to 20, adding two producers, one importer, and one exporter. This would help ensure that the Council reflects the geographical distribution of domestic blueberry production and imports into the United States. Authority for this action is provided in section 1218.40(b) of the Order and section 515(b) of the 1996 Act.

This proposal would also prescribe charges for past due assessments under the Order. A new section 1218.520 would be added to the Order specifying a one-time late payment charge of 5 percent of the assessments due and interest at a rate of 1 percent per month on the outstanding balance, including any late payment and accrued interest. This section would be included in a new Subpart C—Provisions for Implementing the Blueberry Promotion, Research and Information Order. Authority for this action is provided in section 1218.52(e) of the Order and section 517(e) of the 1996 Act.

Regarding the economic impact of the proposed rule on affected entities, expanding the Council membership and other proposed changes to the Order's membership provisions impose no additional costs on industry members. Eligible producers, importers and exporters interested in serving on the Council would have to complete a background questionnaire. Those requirements are addressed later in this proposal in the section titled *Reporting and Recordkeeping Requirements.*

Prescribing charges for past due assessments imposes no additional costs on handlers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in compliance with the Order. For all entities who are delinquent in paying assessments, both large and small, the charges would be applied the same. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments. Of the 2,000 producers, it is estimated that 1,860 producers and 180 importers produce or import over the 2,000-pound threshold and pay assessments under the program.

Regarding alternatives, the Council has been reviewing its membership and contemplating adding new members to reflect changes in the geographic distribution of blueberries for the past few years. As previously mentioned, in 2014, California became the sixth top blueberry producing state, which earned that state a member and alternate seat on the Council, while North Carolina lost its member and alternate seat. The Council formed a subcommittee that considered various options. One option was to eliminate the four regional producer positions and allocate nine seats to producers representing the nine top producing blueberry states and one seat to a producer representing all other producing states (producer at-large). Another option considered was to increase the number of state producer positions from six to seven so that North Carolina would have a seat. The Council also considered maintaining the status quo. Ultimately the Council recommended revising the Order so that the top eight producing blueberry states would be represented on the Council.

The Council also considered adding two importers rather than one importer and one exporter to its membership. However, upon reviewing the import statistics, the Council concluded that it was important to have foreign producer representation from the top two countries shipping blueberries into the United States represented on the Council. Thus, the Council recommended adding one importer and one exporter member and alternates to the Council.

Regarding requirements for late assessments, the Council considered not prescribing rates for late charges and interest. However, the Council concluded that the rates should be codified along with the applicable date when charges would be applied so that the Order is clear on what is required. Additionally, the 1996 Act requires that the rates be prescribed by the Secretary.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. Eligible producers, importers, exporters, handlers, and public members interested in serving on the Council must complete a background questionnaire (Form AD–755) to verify their eligibility. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on blueberry producers, importers, exporters, handlers or public members.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other

[7] Noncitrus Fruits and Nuts 2014 Summary, July 2014, USDA, National Agricultural Statistics Service (NASS), p. 10.

information technologies to provide increased opportunities or citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, this action was discussed by the Council at meetings in October 2012 and in 2013 and at executive and subcommittee meetings held in 2014. The Council met in October 2014 and unanimously made its recommendation. All of the Council's meetings are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of the proposed rule on small entities and we invite comments concerning the potential effects of this action.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1218 is proposed to be amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1218.40, revise the introductory text in paragraph (a), revise paragraphs (a)(2), (a)(3), (a)(4), and (a)(6) and add a new paragraph (c) to read as follows:

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, composed of no more than 20 members and alternates, appointed by the Secretary from nominations as follows:

* * * * *

(2) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(3) Four importers and alternates.

(4) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

* * * * *

(6) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

* * * * *

(c) *Council's ability to serve the diversity of the industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the recommendations of the Council take into account the diverse interest of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

■ 3. Section 1218.41 is revised to read as follows:

§ 1218.41 Nominations and appointments.

(a) *State representatives.* (1) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be recommended to the Secretary for each member and each alternate position. Other eligible persons interested in serving in the respective state positions but not nominated by their State marketing order or commission will be designated by the State organization and/or Council as additional nominees for consideration by the Secretary.

(2) Nomination and election of state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(b) *Regional representatives.* Nomination and election of regional representatives will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated by the Council as additional nominees for consideration by the Secretary.

(c) Nominations for the importer, exporter, first handler, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) Producer, handler and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

■ 4. In § 1218.45, revise paragraph (a), redesignate paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i) and (j), and add a new paragraph (f) to read as follows:

§ 1218.45 Procedure.

(a) At a Council meeting, it will be considered a quorum when a minimum of 11 members, or their alternates serving in their absence, are present.

* * * * *

(f) All votes at meetings of the Council and committees may be cast in person or by electronic voting or other means as the Council and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes.

* * * * *

■ 5. Add Subpart C consisting of § 1218.520, to read as follows:

Subpart C—Provisions for Implementing the Blueberry Promotion, Research and Information Order

§ 1218.520 Late payment and interest charges for past due assessments.

(1) A late payment charge will be imposed on any handler who fails to make timely remittance to the Council of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 5 percent of the assessments due before interest charges have accrued.

(2) In addition to the late payment charge, 1 percent per month interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Council.

Dated: April 30, 2015.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2015–10449 Filed 5–7–15; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2015–BT–STD–0008]

RIN 1904–AD52

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Dedicated-Purpose Pool Pumps; Request for Information

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is requesting information to inform a potential rulemaking to consider new energy conservation standards for dedicated-purpose pool pumps. Pumps, which are already covered equipment under the Energy Policy and Conservation Act of 1975, as amended (EPCA), come in a variety of forms—including dedicated-purpose pool pumps. This RFI seeks to solicit information to help DOE determine the feasibility of developing energy conservation standards and an appropriate test procedure for this equipment. This RFI outlines the potential scope that could be involved in regulating dedicated-purpose pool pumps, possible industry-based testing methods that could be used to evaluate the efficiency of this equipment, and the types of information that would be needed in analyzing the potential for setting standards for this equipment. This RFI also solicits the public for information to help inform DOE's efforts in evaluating the prospect of regulating this equipment.

DATES: Written comments and information are requested on or before June 22, 2015.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by Docket number EERE–2015–BT–STD–0008, by any of the following methods:

(1) *Email:* to *PoolPumps2015STD0008@ee.doe.gov.* Include EERE–2015–BT–STD–0008 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

(2) *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2015–BT–STD–0008, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

(4) *Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *pumps@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Introduction

A. Statutory Authority

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or, in context, ''the Act''), Public Law 94–163, (42 U.S.C. 6311–6317, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment.[2] ''Pumps'' are listed as a type of covered industrial equipment. (42 U.S.C. 6311(1)(A)) Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

standards, and (4) certification and enforcement procedures.

While pumps are treated as a type of covered equipment, EPCA does not define what a pump is. To address this issue, DOE recently published a notice of proposed rulemaking (''NOPR'') that would establish definitions and test procedures for pumps. That proposal (hereafter ''the pumps test procedure NOPR''), proposed to define dedicated-purpose pool pumps to be a category of pump. 80 FR 17586, 17641 (April 1, 2015).

B. Background

Currently, no Federal energy conservation standards exist for any types of pumps, including dedicated-purpose pool pumps (*i.e.* ''pool pumps''). DOE excluded this category of pumps from its recent efforts to develop consensus-based energy conservation standards and an appropriate test procedure for pumps. See 80 FR 17826 (April 2, 2015) (proposing consensus-based energy conservation standards for pumps) and 80 FR 17586 (April 1, 2015) (proposing test procedures for certain categories of pumps). Those efforts, which were the product of a pumps working group (''working group'') that had been created through the Appliance Standards Rulemaking Federal Advisory Committee (''ASRAC''), examined a variety of categories of pumps. While pool pumps were one of the pump categories that were actively considered during the working group's discussions to regulate pump energy consumption, the working group ultimately recommended that DOE initiate a separate rulemaking to address this category of pumps. (Docket No. EERE–2013–BT–NOC–0039, No. 0092 at p. 2) Consistent with that recommendation, DOE is issuing this request for information (''RFI'') to examine the feasibility of establishing standards for pool pumps. The working group's recommendations and related documentation are contained in Docket No. EERE–2013–BT–NOC–0039, which is available at *http://www.regulations.gov.*

C. Regulatory Process

Prior to issuing a proposed rulemaking to establish energy conservation standards for a given type of product or equipment, DOE typically issues a Framework document, in which DOE describes the issues, analyses, and process that it is considering for the development of energy conservation standards. After receiving comment on the Framework document, DOE typically prepares a preliminary analysis and associated preliminary Technical Support Document (''TSD''). The preliminary analysis provides interested parties with an initial draft of potential energy conservation standard levels that DOE may consider along with their potential impacts on consumers, manufacturers, and the nation.

Following these steps, DOE would publish a NOPR to propose a new or amended conservation standard. As with the prior steps outlined above, DOE would afford interested parties an opportunity to provide oral and written comment on the proposal. See generally 42 U.S.C. 6295(p) and 6316(a). The NOPR presents DOE's proposed energy conservation standard levels and a summary of both the burdens and benefits of the proposed standards, pursuant to 42 U.S.C. 6295(o)(2)(B)(i) and 6313(a). The details of DOE's standards analysis are provided in an accompanying TSD. After receiving and considering comments on the NOPR, DOE may issue a final rule that would prescribe new energy conservation standards. The analysis of any final standards would also be contained in a TSD accompanying the final rule.

In a test procedure rulemaking, DOE prepares a NOPR and provides interested parties an opportunity to present oral and written comments, data, information, views and arguments with respect to such test procedure. (42 U.S.C. 6314(b)) DOE takes into account relevant information and comments submitted by interested parties and will adopt any new test procedures, including relevant sampling provisions and rating information, in a test procedure final rule.

With respect to the dedicated-purpose pool pumps at issue, DOE is considering, but has not yet decided, to use an alternative rulemaking approach to the one described above. In particular, DOE is considering pursuing a negotiated rulemaking. In DOE's experience, a negotiated rulemaking can be an efficient and effective mechanism for establishing test procedures and energy conservation standards for commercial equipment, especially for equipment that has not previously been subject to Federal standards. Using this approach, DOE would engage in discussions with interested parties (in lieu of the Framework document and preliminary analysis stages) to help frame and develop the specifics of the NOPR, which would be subject to public comment prior to the issuance of a final rule.

Issue 1: DOE requests feedback on whether a negotiated rulemaking would be an appropriate mechanism to pursue energy conservation standards and test procedures for dedicated-purpose pool pumps. If commenters believe a negotiated rulemaking should be pursued for dedicated-purpose pool pumps, DOE requests suggestions from interested parties regarding persons or entities that might be interested in taking part in such a negotiation, including efficiency advocates, manufacturers, customers, utility representatives, and any other interested parties.

Should DOE decide to initiate a rulemaking to explore new energy conservation standards for dedicated-purpose pool pumps, DOE is required to follow certain statutory criteria. EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)) To determine whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, seven factors. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)) These factors, as well as the series of analyses DOE conducts to fulfill these requirements, are shown in Table I.1

TABLE I.1—ENERGY POLICY AND CONSERVATION ACT REQUIREMENTS AND CORRESPONDING DEPARTMENT OF ENERGY ANALYSES

EPCA requirement	Corresponding DOE analyses
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.

TABLE I.1—ENERGY POLICY AND CONSERVATION ACT REQUIREMENTS AND CORRESPONDING DEPARTMENT OF ENERGY ANALYSES—Continued

EPCA requirement	Corresponding DOE analyses
Economic Justification (7 Factors)	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Shipments Analysis. • Markups for Product Price Determination. • Energy Use Determination.
3. Total projected energy savings	• Life-Cycle Cost and Payback Period Analysis. • Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy conservation	• Shipments Analysis. • National Impact Analysis. • Emissions Analysis. • Utility Impact Analysis. • Monetization of Emission Reductions Benefits.
7. Other factors the Secretary considers relevant	These factors are rulemaking-specific.

II. Discussion

A. Review of Existing Regulatory and Voluntary Programs

DOE reviewed several existing and proposed regulatory and voluntary energy conservation programs for pool pumps. These programs are described below.

1. California Energy Commission

The California Energy Commission (CEC) first issued standards for residential pool pumps under the California Code of Regulations 2006.[3] See Cal. Code Regs., tit. 20, § 1601–1608 (2013). The CEC standards were subsequently adopted by a number of other States.[4] The CEC's regulations cover all residential pool pump and motor combinations, replacement residential pool pump motors, and portable electric spas.

The CEC's current standard has prescriptive design requirements instead of performance based regulations for residential pool pump and motor combinations. See Cal. Code Regs., tit. 20, § 1605.3, subd. (g)(5). The CEC defines ''residential pool pump and motor combination'' as a residential pool pump motor coupled to a residential pool pump. ''Residential pool pump'' is defined as an impeller attached to a motor that is used to circulate and filter pool water in order to maintain clarity and sanitation. ''Residential pool pump motor'' refers to a motor that is used as a replacement residential pool pump motor or as part of a residential pool pump and motor combination. (Motors used in these applications are electrically-driven.) The CEC imposes a design standard that prohibits the use of split phase start [5] and capacitor start—induction run [6] motor designs in residential pool pump motors manufactured on or after January 1, 2006. (*Id.* § 1605.3, subd. (g)(5)(A)) The CEC also requires that residential pool pump motors with a motor capacity [7] of 1 horsepower (hp) or greater manufactured on or after January 1, 2010, have the capability of operating at two or more speeds. The ''low'' speed must have a rotation rate that is no more than one-half of the motor's maximum rotation rate, and must be operated with an applicable multi-speed pump control. (*Id.* § 1605.3, subd. (g)(5)*(B))*

The CEC also prescribes design requirements for pump controls. Pump motor controls that are manufactured on or after January 1, 2008, and are sold for use with a pump that has two or more speeds are required to be capable of operating the pool pump at a minimum of two speeds. The default circulation speed setting shall be no more than one-half of the motor's maximum rotation rate, and high speed overrides should be temporary and not for a period exceeding 24 hours. (*Id.* § 1605.3, subd. (g)(5)*(B))* [8]

In addition to these prescriptive design requirements, the CEC also requires manufacturers of residential pool pump and motor combinations and manufacturers of replacement residential pool pump motors [9] to report certain data regarding the characteristics of their certified equipment. This includes information necessary to verify compliance with the requirements of § 1605.3(g)(5), as well as the tested flow and input power of the equipment at several specific load points. Manufacturers must also submit the pool pump and motor combinations' Energy Factor (EF) in gallons per Watt-hour (gal/Wh) when tested in accordance with the specified test procedure for residential pool pumps. See Cal. Code Regs., tit. 20, § 1604(g)(3)

[3] California Energy Commission. ''Appliance Efficiency Regulations.'' December 2006. CEC–400–2006–002–REV2. Available at: *http://www.energy.ca.gov/2006publications/CEC-400-2006-002/CEC-400-2006-002-REV2.PDF.*

[4] *See, e.g.* Ariz. Rev. Stat. § 44–1375 (2015); Conn. Agencies Regs. § 16a–48.4 (2015); Fla. Stat. Ann. § 533.909 (2015); and Wash. Rev. Code Ann. § 19.260.040 (2015).

[5] Defined as: A motor that employs a main winding with a starting winding to start the motor. After the motor has attained approximately 75 percent of rated speed, the starting winding is automatically disconnected by means of a centrifugal switch or by a relay. Cal. Code Regs., tit. 20, § 1602, subd. (g).

[6] Defined as: A motor that uses a capacitor via the starting winding to start an induction motor, where the capacitor is switched out by a centrifugal switch once the motor is up to speed. Cal. Code Regs., tit. 20, § 1602, subd. (g).

[7] Defined as a value equal to the product of motor's nameplate hp and service factor and also referred to a ''total hp,'' where ''service factor (of an AC motor)'' means a multiplier which, when applied to the rated hp, indicates a permissible hp loading which can be carried under the conditions specified for the service factor. Cal. Code Regs., tit. 20, § 1602, subd. (g).

[8] California Energy Commission, 2014 Appliance Efficiency Regulations, available at *http://www.energy.ca.gov/2014publications/CEC-400-2014-009/CEC-400-2014-009-CMF.pdf.*

[9] Defined as a replacement motor intended to be coupled to an existing residential pool pump that is used to circulate and filter pool water in order to maintain clarity and sanitation. Cal. Code Regs., tit. 20, § 1602, subd. (g).

(see section II.C below for more information).

DOE understands that the CEC is considering revising its pool pump regulations. A recent report by the CEC, ''Analysis of Standards Proposal for Residential Swimming Pool and Portable Spa Equipment,'' [10] considers updated regulations for all single-phase dedicated-purpose pool pump motors under 5 total hp (THP).[11] This report recommends that pool pump motors be covered regardless of whether they are sold with a new pump, or sold as replacement for use with an existing pump wet-end. The report also recommends regulating pool pump motors regardless of whether it is used in an application that requires filtration. Additionally, the report recommends that the CEC move to performance based standards, rather than prescriptive design requirements.

2. ENERGY STAR

The ENERGY STAR® [12] specifications for pool pumps [13] provide criteria for how a product can earn the ENERGY STAR label. The specification is applicable to single-phase residential inground pool pumps that are single-speed, multi-speed, variable-speed, or variable-flow, and have a hp rating of between >0.5 and ≤4 THP. ENERGY STAR defines a residential inground pool pump as a primary filter pump intended for installation with a permanently installed Residential Inground Swimming Pool with dimensions as defined in American National Standards Institute (ANSI)/ National Spa and Pool Institute (NSPI)–5 (ANSI/NSPI–5 2003), ''Standard for Residential Inground Swimming Pools.'' Further, ENERGY STAR specifically excludes residential above ground pool pumps,[14] residential auxiliary pool pumps,[15] and residential portable spa pumps [16] from ENERGY STAR certification.

The ENERGY STAR specifications for residential pool pumps establish a required EF for the equipment. EF is defined as the volume of water pumped in gallons, divided by the electrical energy consumed by the pump motor while pumping that water. The EF rating is established separately for single-speed and multi-speed pumps, as shown in Table II.1.

TABLE II.1—POOL PUMP ENERGY FACTOR CRITERIA AT POOL PUMP PERFORMANCE CURVE A*

Pump sub-type	Speed setting	Energy efficiency level (gal/Wh)
Single-speed pump	Single-Speed	EF ≥3.80
Multi-speed, Variable-speed and Variable-flow pump	Most Efficient Speed	EF ≥3.80

* ENERGY STAR requires that residential inground pool pumps be tested in accordance with their Final Test Method, that is established as part of the ENERGY specification. The ENERGY STAR Final Test Method defines three curves that are applicable to the testing of pool pumps, Curve A, B, and C. See *http://www.energystar.gov/sites/default/files/specs//private/ENERGY%20STAR%20Pool%20Pump%20Version%201%200%20Program%20Requirements%202-15-2013.pdf.*

Regarding multi-speed pumps, ENERGY STAR specifically excludes multi-speed pumps with manual pump controls that are not sold ready to connect to external pump controls. ENERGY STAR also differentiates between variable-speed pumps that can operate at continuously variable speeds and variable-flow pumps that are equipped with controls that can continuously vary speed to control flow.

3. Consortium for Energy Efficiency

Effective on January 1, 2013, the Consortium for Energy Efficiency (CEE) established voluntary testing, rating, and labeling requirements to encourage the market penetration of high-efficiency swimming pool pumps and pool pump controllers.[17] CEE's testing and performance requirements for pool pumps features two ''tiers'' and are specified in terms of EF. These requirements are shown in Table II.2.

TABLE II.2—CEE TIER 1 AND 2 EF REQUIREMENTS

Efficiency level	Lower speed* EF (gal/Wh)	Low speed** EF (gal/Wh)	High speed† EF (gal/Wh)
CEE Tier 1	No requirement	≥3.8	≥1.6
CEE Tier 2	≥12.0	≥5.5	≥1.7

* Where ''lower speed' is the optimal or most efficient speed for the pool pump, likely ranging from 600 to 1200 RPM.

[10] Analysis of Standards Proposal for Presidential Swimming Pool and Portable Spa Equipment, California Energy Commission. Available at *http://www.energy.ca.gov/appliances/2013rulemaking/documents/proposals/12-AAER-2F_Residential_Pool_Pumps_and_Replacement_Motors/California_IOUs_Response_to_the_Invitation_to_Submit_Proposals_for_Pool_and_Spas_2013-07-29_TN-71756.pdf.*

[11] Total hp is the product of motor service factor and motor nameplate (rated) hp.

[12] ENERGY STAR is a joint program of the U.S. Environmental Protection Agency and DOE that establishes a voluntary rating, certification, and labeling program for highly energy efficient consumer products and commercial equipment. Information on the program is available at *www.energystar.gov/index.cfm?c=home.index.*

[13] U.S. EPA. ''ENERGY STAR® Program Requirements for Pool Pumps Version 1.0''. Available at *http://www.energystar.gov/sites/default/files/specs//private/ENERGY%20STAR%20Pool%20Pump%20Version%201%200%20Program%20Requirements%202-15-2013.pdf.*

[14] Defined as a primary filter pump intended for installation with a permanently installed Residential Aboveground/Onground Swimming Pool as defined in ANSI/APSP- 4 2007, ''Standard for Aboveground/Onground Residential Swimming Pools.''

[15] Defined as a pump intended for purposes other than a primary pool filter pump, *i.e.* such as a pool cleaner booster pump or water feature pumps.

[16] Defined as a pump intended for installation with a non-permanently installed residential spa as defined in ANSI/NSPI–6 (ANSI/NSPI–6 1999), ''Standard for Portable Spas.'' Sometimes referred to as a hot tub pump, but not a jetted bathtub pump.

[17] Consortium for Energy Efficiency (CEE). ''High Efficiency Residential Swimming Pool Initiative: Pool Pump Specification.'' January 1, 2013. Available at: *http://library.cee1.org/sites/default/files/library/9987/cee_residential_pool_pump_specification_90947.pdf.* Consortium for Energy Efficiency (CEE). ''High Efficiency Residential Swimming Pool Initiative: Pool Pump Control Specification.'' January 1, 2013. Available at: *http://library.cee1.org/sites/default/files/library/9988/cee_residential_pool_pump_control_specification_29414.pdf.*

** Where ''low speed'' is either the minimum speed for two-speed pumps or half the maximum speed for variable-speed pumps, typically 1725 RPM.

† Where ''high speed'' is the maximum operating speed of the pump, usually 3450 RPM.

CEE's performance requirements for pool pump controls feature two tiers, with similar requirements to those adopted by the CEC. Under the CEE program, a pool pump control must:

(1) have the ability to operate the pool pump at either two (for tier 1) or more than two (for tier 2) speeds;

(2) contain a default filtration speed that is no more than one-half of the motor's maximum rotation speed; and

(3) contain a default setting that returns the pool pump to the lowest user preset speed within one cycle, or 24 hours.

4. Australia and New Zealand

The Australia state and territory governments and the New Zealand government operate the Energy Rating Labeling Program. The Energy Rating program established the voluntary Energy Rating Labeling Program for swimming pool pump-units in April 2010.[18] This program establishes testing, labeling, and minimum efficiency requirements for swimming pool pumps for suppliers who choose to participate.[19] The program relies on Australian Standard (AS) 5102–2009, ''Performance of household electrical appliances—Swimming pool pump—units, Parts 1 and 2'' (AS 5102–2009) as the basis for the efficiency levels and testing requirements for residential pool pumps. The AS 5102–2009 standard:

(1) Applies to pumps intended to be used in swimming pools and spa pools;

(2) covers all single-phase pumps that are capable of a flow rate equal to or greater than 120 L/min (32 gpm);

(3) applies to single-speed, dual-speed, multi-speed, and variable-speed pumps with an input power of less than or equal to 2500 W for any of the available speeds;

(4) covers pumps for the circulation of water through pool filters, sanitization devices, cleaning devices, water heaters (including solar), and pumps for circulation of water through spa or jet outlets or other features forming part of the pool;

(5) covers newly manufactured pumps that form part of a complete new pool installation or intended for sale as replacements for existing pools; and

(6) covers all water-retaining structures designed for human use—

(i) that are capable of holding more than 680 liters of water[20] (179.6 gallons), and

(ii) that incorporate, or are connected to, equipment that is capable of filtering and heating any water contained in it and injecting air bubbles or water into it under pressure so as to cause water turbulence.

The minimum energy performance standard (MEPS) in part 2 of AS 5102–2009 is stated in terms of a minimum EF. Specifically, the current MEPS is 8 liters/watt-hour (2.09 gallons/Wh).

5. European Union

The European Union is considering regulations for private and public pool pumps. In 2014, the European Commission completed a study on pumps for private and public swimming pools, along with other pump products under the Ecodesign Directive.[21] The goal of the study is to provide the European Commission with an assessment of the energy savings potential and feasibility of different types of performance-based or design standards for such equipment. The study considered input from various stakeholders, including representatives from manufacturing companies, energy efficiency advocates, and government agencies. The Ecodesign Directive published the results of their study on March 28, 2014.[22] DOE has reviewed the available information and will continue to monitor these efforts.

B. Scope

The CIP Working Group recommended that DOE initiate a separate rulemaking for dedicated-purpose pool pumps. (Docket No. EERE–2013–BT–NOC–0039, No. 92) Therefore, in the pumps test procedure NOPR, DOE proposed to explicitly define the category of pumps referred to as dedicated-purpose pool pumps, based on their distinct construction and resulting operational characteristics and utility, and also proposed that the test procedure proposed in the NOPR would not address or be applicable to such pumps. *See* 80 FR 17586, 17597 (April 1, 2015).

In considering the establishment of test procedures and energy conservation standards for dedicated-purpose pool pumps, DOE would first establish the criteria specifying the scope of applicable equipment that would be regulated, including physical characteristics, operating parameters, equipment types, and equipment configuration.

1. Definitions

In the pumps test procedure NOPR, DOE proposed a new definition for dedicated-purpose pool pumps. DOE intended for this definition to apply to pumps used to circulate water through the filtration system in a stationary pool. Based on input from interested parties provided during the negotiated rulemaking process (Docket No. EERE–2013–BT–NOC–0039, No. 62 at p. 195), DOE used the presence of an integrated basket strainer to differentiate dedicated-purpose pool pumps from other end suction close-coupled (ESCC) and end suction frame-mounted (ESFM) pumps that may otherwise be within the scope of the pumps test procedure NOPR. 80 FR at 17597. The proposed definition would treat an end suction pump designed specifically to circulate water in a pool and that includes an integrated basket strainer as a dedicated-purpose pool pump. See 80 FR at 17641.

DOE's preliminary review of industry literature indicates that although most models marketed as pool pumps are sold with an integrated basket strainer, some are sold without one. Of the models sold without a basket strainer, most are configured to accept a basket strainer that is sold separately.

DOE notes that non-self-priming end suction pumps that are used in pool applications but are sold without an integrated basket strainer and are ≥1 hp will meet the definition of either an ESCC or ESFM pump as proposed in the pumps test procedure NOPR. 80 FR at 17641 (April 1, 2015). DOE also notes that self-priming pumps of any hp, and <1 hp pool pumps sold without an integrated basket strainer, would not meet the proposed definition of an ESCC or ESFM pump. *Id.*

Issue 2: DOE requests comment on whether the proposed definition of dedicated-purpose pool pumps, as detailed in the pumps test procedure

[18] Summary of the Voluntary Energy Rating Labelling Program for Swimming Pool Pump-Units Available at: *http://www.energyrating.gov.au/for-industry/regulation-information-for-industry/product-standards/overview/as5102/.*

[19] Voluntary Energy Rating Labelling Program for Swimming Pool Pump-Units: Rules for Participation. Available at: *http://www.energyrating.gov.au/wp-content/uploads/2011/02/201002-swimmingpoolpump-labelling1.pdf.*

[20] The standard explicitly exclude residential pool pumps designed for use in spa baths (*i.e.,* water retaining structures less than or equal to 680 liters/180 gallons).

[22] Work on Preparatory studies for implementing measures of the Ecodesign Directive 2009/125/EC: ENER Lot 29—Pumps for Private and Public Swimming Pools, Ponds, Fountains, and Aquariums (and clean water pumps larger than those regulated under ENER Lot 11) Tasks 1–8. Available at: *http://lot29.ecopumps.eu/documents.*

NOPR, 80 FR at 17641, should be modified—and if so, what changes should be made. One item of specific interest to DOE is whether the definition should explicitly account for the self-priming feature described above. DOE also seeks comment regarding how best to handle those pump models marketed as pool pumps but are not sold with a basket strainer.

Issue 3: DOE seeks information and data regarding the percentage of pool pump sales that involve models that are sold without integrated basket strainers.

2. Phase, Horsepower, and Application

The definition of dedicated-purpose pool pumps proposed in the pumps test procedure NOPR is not limited by operational parameters or characteristics. However, DOE may consider limiting the scope of any applicable dedicated-purpose pool pump regulations based on certain operating characteristics, including motor phase (single- versus multi-phase) and horsepower (hp) (THP or rated nameplate hp; minimum or maximum hp).

DOE's review of regulatory and voluntary programs indicates that some programs include maximum and minimum hp limits, as well as phase limitations. For example, the ENERGY STAR pool pump specification is only applicable to single-phase residential inground pool pumps that have a hp rating of between >0.5 and ≥4 THP. Aside from phase and THP limits, no other distinguishing characteristics have been identified.

DOE reviewed available product literature and found that dedicated-purpose pool pumps that meet the definition proposed in the pumps test procedure NOPR 80 FR 17586, 17641 (April 1, 2015) typically range from 0.5 to 5 hp, although DOE identified some pool pumps as large as 20 hp. DOE's research identified three-phase pool pumps as small as 2 hp and single-phase pool pumps as large as 10 hp. DOE notes that if this potential rulemaking establishes limitations on the phase and/or hp of dedicated-purpose pool pumps, a subset of pumps (*i.e.,* self-priming pumps or pumps with integrated basket strainers) may ultimately not be covered by either the scope of this potential dedicated-purpose pool pump rulemaking or by the current energy conservation standards rulemaking currently underway. 80 FR 17826 (April 2, 2015)

Issue 4: DOE requests data on the breakdown of shipments of dedicated-purpose pool pumps by phase (single- or multi-) and by hp range. To the extent possible, DOE seeks annual shipments data broken down by phase and horsepower covering the last 15 years.

Issue 5: DOE requests comment on whether DOE should consider motor phase or hp limitations for dedicated-purpose pool pumps in the scope of any potential rulemaking. If so, why, and if not, why not?

Pools pumps can be classified either by the rated hp (also referred to as ''nameplate hp'') or the THP (also known as ''service factor hp'') of the motor with which the pump is sold. Rated hp refers to the output power of the motor, as stated by the manufacturer, at a specified rotational speed, voltage, and frequency. Alternatively, THP is a characterization of the maximum continuous load the motor is designed to serve at nominal rating conditions. THP can be calculated as a product of the rated hp and the service factor. The service factor is defined as a scalar quantity that indicates the percentage beyond the rated hp that a pump motor may continuously operate without exceeding its allowable insulation class temperature limit. (For example, a 5 hp motor rated with a service factor of 1.25 can safely operate at 6.25 hp without incurring heat-related damage.) When determining service factor, other operating parameters, such as rated voltage, frequency, and ambient temperature, must be within the normal operating range.

Issue 6: DOE requests comment on the merits of using either the rated hp or total horse power as the metric in creating potential exclusions or equipment classes.

3. Product Type

DOE identified several different pool pump types or classifications used by the industry. These include inground and aboveground pool pumps, inflatable pool pumps, auxiliary pumps, spa pumps, and several other types of pumps.

(a) Inground and Aboveground Pool Pumps

Dedicated-purpose pool pumps serve both inground pools and aboveground pools. DOE research has indicated that for inground pools, dedicated-purpose pool pumps are required to be self-priming. As such, the industry appears to refer to self-priming pool pumps as ''inground pool pumps'' in their marketing literature. These ''inground pool pumps'' typically are designed to provide higher hydraulic heads [23] than the non-self-priming dedicated-purpose pool pumps designed for installation in aboveground pools. The higher heads provided by self-priming pumps are typically required because the ''inground pool pumps'' usually must overcome greater flow resistance (*e.g.,* from longer piping or more piping bends) than those serving aboveground pools. However, DOE has found that some pool pumps listed as aboveground are also self-priming.

ENERGY STAR differentiates inground versus aboveground pools based on their application in residential swimming pools with dimensions as defined in American National Standards Institute (ANSI)/National Spa and Pool Institute (NSPI)–5 (ANSI/NSPI–5 2003), ''Standard for Residential Inground Swimming Pools,'' and ANSI/APSP–4 2007, ''Standard for Aboveground/Onground Residential Swimming Pools,'' respectively.

The ENERGY STAR pool pumps framework [24] document lays out a scope limited to the residential inground pool pumps market because of the large end-user base and national savings potential present with this market, as well as the availability of adequate supporting test data. The absence of robust test data for aboveground pumps led the ENERGY STAR program to not issue specifications for these pumps. DOE notes that both inground and aboveground pool pumps would meet the definition of a dedicated-purpose pool pump, as proposed in the pumps test procedure NOPR. 80 FR at 17641.

Issue 7: DOE requests information on any performance or physical component differences between dedicated-purpose pool pumps designed to serve inground pools versus aboveground pools. Specifically, DOE requests comment on whether dedicated-purpose pool pumps serving inground pools need to be self-priming to operate as expected.

(b) Inflatable Pool Pumps

DOE has identified a type of pump, sometimes classified as an inflatable pool pump, which is sold with an integrated filter system. The pump, motor, and basket strainer portion of these products appear to be similar to inground or aboveground pool pumps. This similarity in design indicates that the portion of the product not including the filter system may meet the current definition of a dedicated-purpose pool pump, as proposed in the pumps test procedure NOPR. 80 FR at 17641.

[23] ''Hydraulic head'' is a term used to describe the liquid pressure in a system and is typically measured in terms of the height of a column of the fluid above a reference plane that would result in an equivalent pressure.

[24] ''ENERGY STAR® Residential Swimming Pool Pump Specification Framework'', Available at *http://www.energystar.gov/sites/default/files/specs//private/Pool_Pump_Specification_Framework.pdf.*

Issue 8: DOE requests data on the annual shipments of inflatable pool pumps or pumps with integrated filter systems for the last 15 years.

Issue 9: DOE requests comment on whether pumps with integrated filter systems should be part of a potential rulemaking for dedicated-purpose pool pumps. If so, why? If not, why not? If standards for this category of pumps should be included as part of any DOE effort to regulate dedicated-purpose pool pumps, should any potential standards be limited to the pump and motor portion only, or should it also include the filter system? Please include the reasons supporting (or opposing) your view.

Issue 10: DOE requests comment on how inflatable pool pumps or pumps with integrated filter systems are typically designed and distributed for sale. Specifically, DOE is interested in whether the pump, motor, and basket strainer portions of pumps sold with integrated filter systems are typically purchased from manufacturers as completed units. If not, do manufacturers of pumps with integrated filter systems design and produce the pump, motor, and basket strainer specifically for use in such systems, even though they may be distributed in commerce as separate components?

(c) Auxiliary Pumps

DOE's research indicates that certain types of pumps are used to drive auxiliary pool equipment, such as pool cleaners, spas, and water features. In the industry, these pumps may be referred to as ''specialty,'' ''booster,'' or ''auxiliary'' pumps. The ENERGY STAR pool pump specification defines auxiliary pumps as those pumps which are not used primarily for pool filtration and water recirculation.

Limited data are available on these types of pumps. A review of the market indicates that these pumps do not have an integrated basket strainer, and thus would not meet the definition of dedicated-purpose pool pump as proposed in the pumps test procedure NOPR. 80 FR at 17641. However, DOE's research suggests that most auxiliary pumps may be small ESCC pumps. As such, those that are 1 hp or greater would fall within the scope of DOE's recently proposed pumps test procedure. (80 FR 17586 (April 1, 2015)).

Issue 11: DOE requests comment on the annual shipments for the past 15 years of auxiliary pumps, broken-out by any commonly used equipment type designations, size (*i.e.* less than 1 hp and greater than or equal to 1 hp), and any other parameters relevant to the pool pump industry. DOE also requests data on typical usage profiles and energy use of auxiliary pumps used in pool applications.

Issue 12: DOE requests comment on how best to distinguish auxiliary pumps from other dedicated-purpose pool pumps intended for continuous use (*i.e.,* the lack of an integrated basket strainer).

Issue 13: DOE requests comment on whether auxiliary pumps of less than 1 hp (or otherwise not meeting the definition of an ESCC pump as proposed in the pumps test procedure NOPR, (80 FR 17586 (April 1, 2015)) should be included in the scope of any potential pool pump rulemaking. If so, why? If not, why not?

(d) Spa Pumps

DOE notes that spa pumps are similar to auxiliary pumps in that they are small ESCC pumps without an integrated basket strainer. ENERGY STAR defines ''residential spa pump'' as a pump intended for installation in a non-permanently installed residential spa as defined in ANSI/NSPI–6 (ANSI/NSPI–6 1999), ''Standard for Portable Spas.'' ENERGY STAR also clarified that such pumps are sometimes referred to as a hot tub pump, but do not include jetted bathtub pumps.

Issue 14: DOE requests comment on the distinguishing characteristics of spa pumps (as opposed to dedicated-purpose pool pumps) and whether any categories of spa pumps should be included in the scope of any potential pool pump rulemaking.

(e) Other Pumps

DOE's research indicates that a type of pump commonly known as a ''pool cover pump'' is often classified by the industry as a pool pump. These pool cover pumps are typically submersible or sump pumps, and therefore they do not meet the definition of dedicated-purpose pool pump as proposed in the pumps test procedure NOPR. 80 FR at 17641.

DOE has also identified solar-powered and ''bottom feeder'' pool pumps available for sale. These pumps are typically very small (less than 1/4 hp) and are also submersible. These pumps would not meet the definition proposed in the pumps test procedure NOPR. 80 FR at 17641.

Issue 15: DOE requests information on the annual shipments for the past 15 years of pool cover pumps and solar-powered pool pumps, separately broken down by horsepower. DOE also requests comment on whether to include these pumps in any potential rulemaking to set energy conservation standards for dedicated-purpose pool pumps. If so, why? If not, why not?

Issue 16: DOE requests comment and any supporting information on any other categories of pool pumps that would be relevant to its efforts in examining potential energy conservation standards for dedicated-purpose pool pumps that are not already addressed in section II.B. 3.

4. Sales Configuration

Some types of pumps can be differentiated by the configuration in which the pump is sold, either as a bare pump, with a motor, or with a motor and controls.

In the pumps test procedure NOPR, DOE proposed to differentiate pumps considered in the scope of that rulemaking based on the configuration in which the pump is sold. These configurations include: the bare pump, the bare pump with an electric motor, and the bare pump with an electric motor and continuous or non-continuous controls. 80 FR at 17627. The pumps test procedure NOPR proposed unique but comparable test methods and rating metrics that are applicable to a pump based on its sale configuration. Id. To achieve this differentiation, DOE proposed a series of definitions based on the CIP Working Group recommendations (Docket No. EERE–2013–BT–NOC–0039, No. 92 at p. 1):

(1) ''Pump'' means equipment designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver, and controls.

(2) ''Bare pump'' means a pump excluding mechanical equipment, driver, and controls.

(3) ''Mechanical equipment'' means any component that transfers energy from a driver to a bare pump.

(4) ''Driver'' means the machine providing mechanical input to drive a bare pump directly or through the use of mechanical equipment. Examples include, but are not limited to, an electric motor, internal combustion engine, or gas/steam turbine.

(5) ''Control'' means any device that can be used to operate the driver. Examples include, but are not limited to, continuous or non-continuous speed controls, schedule-based controls, on/off switches, and float switches.

80 FR 17586, 17641–42 (April 1, 2015).

DOE's research indicates that most dedicated-purpose pool pumps are

paired with an electric motor when sold—rarely are they sold as bare pumps.

Issue 17: DOE requests information on whether dedicated-purpose pool pumps are offered for sale by pool pump manufacturers as bare pumps. If they are offered for sale as bare pumps, are they typically paired with a motor by a distributor or retailer before being sold to an end user? Related to this request, DOE seeks information regarding the percentage of dedicated-purpose pool pump shipments that are sold by the pump manufacturer as a bare pump, without a motor.

Dedicated-purpose pool pumps can also be sold with different types of controls that allow for the variation of motor speed at part load conditions. Specifically, dedicated-purpose pool pumps can be paired with multi-speed motors or variable-speed controls. The CEC established definitions of two-speed motors and variable-speed motors, while ENERGY STAR established definitions for multi-speed pumps, variable-speed pumps, and variable-flow pumps (flow controlled variable-speed pumps; see section II.A.2).

In the pumps test procedure NOPR, DOE proposed definitions of continuous controls and non-continuous controls to distinguish between controls with discrete speed options (*e.g.,* two-speed and multi-speed controls) and controls that can continuously adjust speed in response to the required load (*e.g.,* variable-speed drives):

- ''Continuous Control'' means a control that adjusts the speed of the pump driver continuously over the driver operating speed range in response to incremental changes in the required pump flow, head, or power output.
- ''Non-Continuous Control'' means a control that adjusts the speed of a driver to one of a discrete number of non-continuous preset operating speeds, and does not respond to incremental reductions in the required pump flow, head, or power output.

80 FR at 17641 (April 1, 2015).

These definitions may also be relevant to dedicated-purpose pool pumps.

Issue 18: DOE requests information on the market share of dedicated-purpose pool pumps sold with: (1) Continuous controls, (2) non-continuous controls, and (3) other types of controls. DOE also seeks information on what other types of controls are applicable to pool pumps along with the market share held by each of these other controls.

C. Test Procedure and Rating Metrics

Related to considering potential energy conservation standards for dedicated-purpose pool pumps, DOE is also considering potential test procedures and rating metrics for dedicated-purpose pool pumps. Manufacturers of covered equipment use DOE test produces and rating metrics as the basis for (1) certifying to DOE that their equipment complies with any applicable energy conservation standards adopted under EPCA, (42 U.S.C. 6295(s) and 6316(a)(1)), and (2) making representations about the efficiency of that equipment. (42 U.S.C. 6314(d))

To inform DOE's consideration of test procedures and rating metrics, DOE reviewed the pool pump test procedures that are established or referenced by the existing regulatory and voluntary programs that are discussed in section II.A. The rating metrics and testing requirements for each of these programs are summarized in Table II.3.

TABLE II.3—SUMMARY OF RATING METRICS AND INDUSTRY TEST PROCEDURES REFERENCED BY VARIOUS VOLUNTARY AND REGULATORY POOL PUMP PROGRAMS

Rating program	Metric	Test procedure	Other relevant standards
CEC 2014 Appliance Efficiency Regulations.	Prescriptive design requirements	IEEE Standard 114–2001 for determination of motor efficiency ANSI/HI 1.6–2000 with additional rating requirements and calculations (equivalent to ANSI/APSP/ICC–15a–2013) for pump performance.	N/A.
ENERGY STAR Program Requirements for Pool Pumps—Version 1.0.	EF	ANSI/HI 1.6–2000 with additional rating requirements and calculations (equivalent to ANSI/APSP/ICC–15a–2013).	ANSI/APSP–4 2007. ANSI/NSPI–5–2003. ANSI/NSPI–6–1999.
CEE High-Efficiency Swimming Pool Initiative.	EF and prescriptive design requirements for pool pump controls.	ANSI/APSP/ICC–15a–2013	N/A.
Australia and New Zealand Energy Rating Program.	EF	Part 1 of AS 5102–2009	N/A.

As discussed in section II.A.1, the CEC regulations established prescriptive design requirements for residential pool pumps that focused on the motor and controls with which the pool pump is sold.[25] As such, the CEC requires that reported motor efficiency be verifiable by IEEE Standard 114–2001, ''IEEE Standard Test Procedure for Single-Phase Induction Motors.'' [26]

Although the CEC does not currently regulate pool pumps on a performance basis, the regulations require reporting certain performance information when certifying a pool pump under the Title 20 regulations. Cal. Code Regs., tit. 20, § 1606, subd. (a)(3). For example, pool pump efficiency must be measured in accordance with the Hydraulic Institute's (HI) Standard 1.6 (ANSI/HI 1.6–2000), ''American National Standard for Centrifugal Pump Tests'' and a manufacturer must report that its pool pump has been tested in accordance with this testing standard. Similarly, a manufacturer must test the performance of its pool pump along three representative system curves, known as curves A, B, and C. Cal. Code Regs., tit. 20, § 1604, subd. (g)(3).

The test requirements for ENERGY STAR and CEE are harmonized with those adopted by the CEC.[27] The

[25] California Energy Commission, 2014 Appliance Efficiency Regulations, available at *http://www.energy.ca.gov/2014publications/CEC-400-2014-009/CEC-400-2014-009-CMF.pdf.*

[26] Available for purchase at: *http://standards.ieee.org/findstds/standard/114-2001.html.*

[27] The curves used by ENERGY STAR are identical to CEC curves A, B, and C.

ENERGY STAR and CEE test methods for pool pumps reference the Association of Pool and Spa Professional's (APSP) Standard 15 with Addendum 1 (ANSI/APSP/ICC–15a–2013), ''American National Standard for Residential Swimming Pool and Spa Energy Efficiency.'' ANSI/APSP/ICC–15a–2013 is based on the CEC test methodology.

The test requirements for the Australia and New Zealand energy rating program are defined in part 1 of AS 5102–2009, ''Performance of household electrical appliances—Swimming pool pump—units: Energy consumption and energy performance.'' Part 1 of the AS 5102–2009 test procedure is similar to the CEC testing requirements, but includes a different test setup and different measurement requirements. In addition, part 1 of AS 5102–2009 only requires rating along a new curve D.

In all of these test methods, the pump head is adjusted until the flow and head lie on the specified system curve. EF is then calculated at various rating points and speeds for multi- and variable-speed pumps as the ratio of flow over power, and is expressed in units of gal/Wh.

DOE recently proposed a test procedure for pumps that would incorporate by reference the Hydraulic Institute's (HI) Standard 40.6–2014, ''Methods for Rotodynamic Pump Efficiency Testing,'' as the basis for establishing the tested performance of a bare pump, pump with motor, or pump with motor and controls. 80 FR at 17642. DOE's proposed test procedure for pumps also includes additional calculations and default assumptions necessary to determine the constant load pump energy index (PEI_{CL}) for bare pumps and pumps sold with electric motors, or the variable load pump energy index (PEI_{VL}) for pumps sold with electric motors and continuous or non-continuous controls. 80 FR at 17643–17651. The PEI_{CL} and PEI_{VL} describe the power consumption of the rated pump, inclusive of a motor and any continuous or non-continuous controls, normalized with respect to the performance of a minimally compliant pump for each pump basic model. DOE believes that such an approach could potentially be modified to be applicable to dedicated-purpose pool pumps.

Issue 18: DOE requests comment on the pros and cons of any of the rating metrics relevant to dedicated-purpose pool pumps, including EF, PEI_{CL}, and PEI_{VL}, or prescriptive design requirements for the motor and/or controls.

Issue 19: DOE requests comment on the applicability of any of the test procedures that might be applied to dedicated-purpose pool pumps, including the test procedure proposed by DOE for pumps in the pumps test procedure NOPR. If any particular provisions are not applicable, DOE requests comment on how they might be adapted to be more appropriate for the testing of dedicated-purpose pool pumps.

Issue 20: DOE requests comment on the burdens, if any, associated with testing dedicated-purpose pool pumps in accordance with any of the referenced industry test procedures.

Issue 21: DOE requests comment on any other pool pump test procedure that DOE should consider in developing a potential test procedure for dedicated-purpose pool pumps.

D. Data Needs for Rulemaking Analyses

To help inform DOE's decision of whether to regulate dedicated-purpose pool pumps, DOE seeks a variety of different types of information. If DOE chooses to regulate this equipment, the information collected in this RFI will also inform a number of analyses that are required to support an energy conservation standard rulemaking. Table I.1 provides a summary of these analyses. To this end, DOE seeks detailed data regarding the following aspects:

1. Market and Technology Assessment

Issue 22: DOE seeks data on historical shipments (specifically from 1995–2014, in number of units and revenues) for dedicated-purpose pool pumps. Where available, DOE requests this data be broken-out by equipment type, hp (rated nameplate hp or THP), operating speed, application, and any other parameters relevant to the pool pump industry.

Issue 23: The CEC maintains a database of pool pumps meeting the CEC's prescriptive design requirement standard.[28] DOE seeks comment on whether the range of product efficiencies (specified in EF) in the CEC database are representative of dedicated-purpose pool pumps in the United States. If not, DOE is interested in information regarding the typical range of efficiencies for dedicated-purpose pool pumps. If available, DOE requests these data be broken-out by equipment type, hp (rated nameplate hp or THP), operating speed, application, and any other parameters relevant to the pool pump industry.

Issue 24: DOE requests comment and information on design features that are typically used by the pool pump manufacturers to describe and differentiate pool pumps. This includes features used to differentiate various types of pool pumps from each other, as well as features used to differentiate dedicated-purpose pool pumps from the scope of pumps defined in the pumps test procedure NOPR. See 80 FR at 17642–17643. Additionally, DOE requests information on how these design features affect the efficiency of a dedicated-purpose pool pump.

Issue 25: DOE requests information and comment on technology options that could be considered to improve the energy efficiency of dedicated-purpose pool pumps. Specifically, DOE is interested in the magnitude of efficiency improvements available from any potential technology options, as well as how these efficiency improvements may, or may not, impact equipment performance, features, utility, or safety. Please provide efficiency improvements in terms of the relevant parameter, such as pump efficiency, motor efficiency, EF, etc.

Issue 26: DOE understands that there are two typical market channels for dedicated-purpose pool pumps, the distributor model (Manufacturer → Distributor → Pool Service Contractor → Customer) and the retail model (Manufacturer → Retail Store → Customer). DOE requests comment on whether these distribution channels sufficiently depicts the market channels for this equipment or if other channels, such as direct sales through national accounts or wholesalers, exist that DOE should also consider. DOE requests data regarding the sizes of these market channels and requests data on the percentage of dedicated-purpose pool pumps sold through each channel, by type or application, if appropriate.

2. Energy Use Analysis

Issue 27: According to APSP,[29] in 2013 there were approximately 8 million inground and aboveground swimming pools in the United States. DOE requests comment and information on the total number of installed inground and aboveground swimming pools in each state or climate region of the United States. DOE also requests comment on the number and type of dedicated-purpose pool pumps that are typically installed in each inground and aboveground swimming pool.

[28] Available at: *www.appliances.energy.ca.gov/QuickSearch1024.aspx.*

[29] The Association of Pool and Spa Professionals, ''U.S. Swimming Pool and Hot Tub Market 2013''. Available at: *http://apsp.org/portals/0/images/APSP%20statistics%202013.jpg.*

Issue 28: DOE seeks comment regarding the typical energy use of dedicated-purpose pool pumps. If available, DOE requests that these data be broken-out by equipment type, hp (rated nameplate hp or THP), operating speed, application, and any other parameters relevant to the pool pump industry.

Issue 29: A study by CEE [30] estimates that adopting higher efficiency technologies, such as multi-speed and variable-speed pool pumps, may result in energy savings of 1,900–3,800 kWh/year for each residential swimming pool pump. DOE seeks comment on whether the approach and assumptions described in that report would be appropriate to use as a basis for estimating national energy savings, and on the accuracy of the estimates themselves. If so, why? If not, why not?

Issue 30: The pool pump industry defines ''turnover rate'' as the total number of times the entire volume of water in the pool is circulated (or ''turned over'') within a 24-hour period. The industry defines ''turnover time'' as the amount of time required to circulate the entire volume of water in the pool once. Turnover rate is calculated by dividing 24 hours by the turnover time in hours. DOE seeks comment on typical turnover rates and times, as well as any variation by application, state, or climate region.

Issue 31: DOE seeks comment on the usage profiles of dedicated-purpose pool pumps broken-out by climate, pool or pump type (*i.e.,* inground or aboveground, indoor or outdoor), hp (rated nameplate hp or THP), and efficiency. DOE is specifically interested in hours of use per day at each speed when multi-speed or variable-speed pumps are used.

Issue 32: DOE seeks data and comment on the number of months per year that dedicated-purpose pool pumps typically operate, broken-out by state or climate region.

Issue 33: DOE requests comment on the typical lifetime of dedicated-purpose pool pumps.

3. Manufacturer Impact Analysis

Issue 34: DOE seeks to identify all dedicated-purpose pool pump manufacturers that currently distribute equipment in the United States. Currently, DOE has identified Pentair Ltd., Hayward Industries, Inc., Zodiac, Speck Pumps, and Waterway Plastics as dedicated-purpose pool pump manufacturers. DOE seeks comment on the comprehensiveness of this list of manufacturers, and requests the names and contact information of any other domestically- or foreign-based manufacturers that sell or otherwise market their dedicated-purpose pool pumps in the United States.

Issue 35: DOE seeks to identify all dedicated-purpose pool pump manufacturers that currently distribute equipment in the United States who also qualify as small businesses. The Small Business Administration (SBA) defines a small business under North American Industry Classification System (NAICS) code 333911, ''Pump and Pumping Equipment Manufacturing,'' as one having no more than 500 employees.[31] DOE requests the names of any small business manufacturers of dedicated-purpose pool pumps that it should consider in its analysis.

III. Public Participation

DOE will accept comments, data, and information regarding this RFI and other matters relevant to DOE's consideration of any energy conservation standards for dedicated-purpose pool pumps by June 22, 2015. After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments. These actions will be taken to aid in the consideration of a rulemaking for dedicated-purpose pool pumps.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendees' lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2015-BT-STD-0008.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on April 24, 2015.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2015–11011 Filed 5–7–15; 8:45 am]

BILLING CODE 6450–01–P

[30] CEE High Efficiency Residential Swimming Pool Initiative, Consortium of Energy Efficiency. Available at *http://library.cee1.org/sites/default/files/library/9986/cee_res_swimmingpoolinitiative_07dec2012_pdf_10557.pdf.*

[31] Size standards, listed by NAICS code and industry description and are available at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/smallbusiness-size-standards.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1279; Directorate Identifier 2014–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–21–06 for all BAE SYSTEMS (Operations) Limited Model 4101 airplanes. AD 2011–21–06 currently requires revising the maintenance program. Since we issued AD 2011–21–06, we have determined that the life limit of certain main landing gear components must be reduced, and certain post-repair inspections of critical structure are necessary. This proposed AD would require a new revision of the maintenance/inspection program. We are proposing this AD to prevent failure of certain structurally significant items,

including the main landing gear and nose landing gear, which could result in reduced structural integrity of the airplane; and to prevent fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 22, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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–2015–1279; 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 proposed 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1279; Directorate Identifier 2014–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On September 23, 2011, we issued AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011). AD 2011–21–06 requires actions intended to address an unsafe condition on BAE SYSTEMS (Operations) Limited Model 4101 airplanes.

Since we issued AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), we have determined that the life limit of certain main landing gear components must be reduced, and new inspections of certain repairs that affect fatigue strength of critical structure must be added to the maintenance/inspection program.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0043, dated February 21, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The Jetstream J41 Aircraft Maintenance Manual (AMM), includes the following chapters:
>
> 05–10–10 ''Airworthiness Limitations'',
>
> 05–10–20 ''Certification Maintenance Requirements'', and,
>
> 05–10–30 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''.
>
> The maintenance tasks and limitations contained in these chapters have been identified as mandatory actions for continued airworthiness and EASA issued AD 2010–0098 [dated May 27, 2010 (*http://ad.easa.europa.eu/ad/2010-0098*) which corresponds to FAA AD 2011–21–06, Amendment 39–16829 (79 FR 64788, October 19, 2011)] to require operators to comply with those instructions.
>
> Since that [EASA] AD was issued, BAE Systems (Operations) Ltd issued Revision 37 of the AMM amending Chapter 05–10–10 to revise and reduce the life limit of certain main landing gear components. In addition, Revision 38 of the AMM was issued to amend Chapters 05–10–00 and 05–10–10 introducing inspections to be accomplished after implementation of some repairs affecting fatigue strength of critical structure. Failure to comply with the new and more restrictive actions could result in an unsafe condition.
>
> For the reasons described above, this [EASA] AD, which supersedes EASA AD 2010–0098, requires implementation of the maintenance requirements and/or airworthiness limitations as specified in the defined parts of Chapter 05 of the AMM at Revision 38.

The unsafe condition is the failure of certain structurally significant items, including the main landing gear and nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1279.

Related Service Information Under 1 CFR Part 51

BAE SYSTEMS (Operations) Limited has issued Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013, which describe procedures for inspections of structurally significant items and the fuel system. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent

information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

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

The actions required by AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2011–21–06 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $340, or $85 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 removing Airworthiness Directive (AD) 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), and adding the following new AD:

BAE SYSTEMS (Operations) Limited: Docket No. FAA–2015–1279; Directorate Identifier 2014–NM–049–AD.

(a) Comments Due Date

We must receive comments by June 22, 2015.

(b) Affected ADs

This AD replaces AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011).

(c) Applicability

This AD applies to all BAE SYSTEMS (Operations) Limited Model 4101 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05.

(e) Reason

This AD was prompted by the need to reduce the life limit of certain main landing gear components, and to add certain post-repair inspections of critical structure to the maintenance/inspection program. We are issuing this AD to prevent failure of certain structurally significant items, including the main landing gear and nose landing gear, which could result in reduced structural integrity of the airplane; and to prevent fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), with no changes. Within 90 days after November 23, 2011 (the effective date of AD 2011–21–06): Revise the maintenance program by incorporating Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 Aircraft Maintenance Manual (AMM), Revision 35, dated February 15, 2011. The initial compliance times for the tasks are at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the ''Mandatory Life Limits'' column in Subject 05–10–10, or within 90 days after November 23, 2011 (the effective date of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011)), whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the accumulation of the applicable flight cycles specified in the ''Initial Inspection'' column in Subject 05–10–10, or within 90 days after November 23, 2011 (the effective date of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011)), whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, ''Certification Maintenance Requirements,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the accumulation of the applicable flight hours specified in the ''Time Between Checks'' column in Subject 05–10–20, or within 90 days after November 23, 2011 (the effective date of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), whichever occurs later; except for tasks that specify ''first flight of the day'' in the ''Time Between Checks'' column in Subject 05–10–20, the initial compliance time is the first flight of the next day after doing the revision required by paragraph (g) of this AD, or within 90 days after November 23, 2011 (the effective date of AD 2011–21–06), whichever occurs later.

(h) Retained Restrictions on Alternative Actions, Intervals, and/or CDCCLs, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(i) New Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013. The initial compliance times for the tasks are at the applicable times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD. Doing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the ''Mandatory Life Limits'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the accumulation of the applicable flight cycles specified in the ''Initial Inspection'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, ''Certification Maintenance Requirements,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited J41 AMM, Revision 38, dated September 15, 2013: Prior to the accumulation of the applicable flight hours specified in the ''Time Between Checks'' column in Subject 05–10–20, or within 90 days after the effective date of this AD, whichever occurs later; except for tasks that specify ''first flight of the day'' in the ''Time Between Checks'' column in Subject 05–10–20, the initial compliance time is the first flight of the next day after doing the revision required by paragraph (j) of this AD, or within 90 days the effective date of this AD, whichever occurs later.

(j) New Restrictions on Alternative Actions, Intervals, and/or (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

(k) Credit for Previous Actions

This paragraph restates the provisions of paragraph (j) of AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011). This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before November 23, 2011 (the effective date of AD 2011–21–06), in accordance with Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010; which are not incorporated by reference in this AD.

(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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2011–21–06, Amendment 39–16829 (76 FR 64788, October 19, 2011), are not approved as AMOCs with this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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 BAE Systems (Operations) Limited'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 (MCAI) EASA Airworthiness Directive 2014–0043, dated February 21, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1279.

(2) For service information identified in this AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* 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.

Issued in Renton, Washington, on April 29, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–11023 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1277; Directorate Identifier 2014–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This proposed AD was prompted by fatigue testing that determined fatigue damage could appear on clips, shear webs, and angles at certain rear fuselage sections and certain frames. This proposed AD is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. This proposed AD would require replacing the clips, the shear webs, and angles, including doing all applicable related investigative

actions, and repair if necessary. We are proposing this AD to prevent fatigue damage on the clips, shear webs, and angles, which could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 22, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 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.

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–2015–1277; 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 proposed 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1277; Directorate Identifier 2014–NM–155–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

As described in FAA Advisory Circular 120-104 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/120-104.pdf*), several programs have been developed to support initiatives that will ensure the continued airworthiness of aging airplane structure. The last element of those initiatives is the requirement to establish a limit of validity (LOV) of the engineering data that support the structural maintenance program under 14 CFR 26.21. This proposed AD is the result of an assessment of the previously established programs by the DAH during the process of establishing the LOV for Airbus Model A319, A320, and A321 series airplanes. The actions specified in this proposed AD are necessary to complete certain programs to ensure the continued airworthiness of aging airplane structure and to support an airplane reaching its LOV.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0177, dated July 25, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319, A320, and A321 series airplanes. The MCAI states:

> During the A320 fatigue test campaign for Extended Service Goal (ESG), it was determined that fatigue damage could appear on the clips, shear webs and angles at rear fuselage section 19, on Frame (FR) 72 and FR74.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this potential unsafe condition, Airbus developed a modification, which has been published through Airbus Service Bulletin (SB) A320–53–1266 for in-service application to allow aeroplanes to operate up to the new ESG limit.
>
> For the reasons described above, this [EASA] AD requires replacement of the affected clips, shear webs and angles at rear fuselage section 19, FR72 and FR74 [including all applicable related investigative actions and repair if any cracking is found].

Related investigative actions include rotating probe testing for cracking of the fastener holes and high frequency eddy current inspections for cracking of the stringers. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1277.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–53–1266, Revision 01, dated June 20, 2013. This service information describes procedures for replacing clips, shear webs, and angles at rear fuselage section 19, FR72 and FR74. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 44 airplanes of U.S. registry.

We also estimate that it would take about 110 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $411,400, or $9,350 per product.

We have received no definitive data on the costs of required parts.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby

reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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

For the reasons discussed above, I certify this proposed regulation:

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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):

Airbus: Docket No. FAA–2015–1277; Directorate Identifier 2014–NM–155–AD.

(a) Comments Due Date

We must receive comments by June 22, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 30975 has been embodied in production.

(1) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by fatigue testing that determined fatigue damage could appear on clips, shear webs, and angles at certain rear fuselage sections and certain frames. This AD is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. We are issuing this AD to prevent fatigue damage on the clips, shear webs, and angles, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Replacement

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Replace the clips, shear webs, and angles at rear fuselage section 19, frame (FR)72 and FR74, and do all applicable related investigative actions before further flight, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1266, Revision 01, dated June 20, 2013. If any crack is found during any related investigative action required by this AD: Before further flight, repair 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).

(1) Before exceeding 48,000 flight cycles or 96,000 flight hours, whichever occurs first since the airplane's first flight.

(2) Within 30 days after the effective date of this AD.

(h) Additional Replacement for Airplanes on Which the Replacement Required by Paragraph (g) of This AD Is Done Before 30,000 Flight Cycles or 60,000 Flight Hours

For airplanes on which the replacement of clips, shear webs, and angles specified in Airbus Service Bulletin A320–53–1266 is done before accumulating 30,000 flight cycles or 60,000 flight hours, whichever occurred first since the airplane's first flight: Within 30,000 flight cycles or 60,000 flight hours, whichever occurs first after that replacement, do the replacement specified in paragraph (g) of this AD.

(i) Credit for Previous Actions

Except as required by paragraph (h) of this AD: This paragraph provides credit for the replacement required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1266, dated January 11, 2013, which is not incorporated by reference in this AD.

(j) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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 Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0177, dated July 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by

searching for and locating Docket No. FAA–2015–1277.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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 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.

Issued in Renton, Washington, on April 29, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10948 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0929; Directorate Identifier 2014–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. This proposed AD was prompted by multiple reports of chafing found on an electrical wiring harness in the aft equipment bay, caused by contact between the wiring harness and a neighboring hydraulic line. This proposed AD would require an inspection, repair if necessary, and modification of the wiring harness installation to ensure that the wiring harness routing is correct and a minimum clearance between the wire and the hydraulic line is maintained. We are proposing this AD to detect and correct chafing on an electrical wiring harness, which could cause an electrical short circuit or lead to a malfunction of the flight control system, the engine indication system, or the hydraulic power control system, and adversely affect the continued safe operation and landing of the airplane.

DATES: We must receive comments on this proposed AD by June 22, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email *thd.crj@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.

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–2015–0929; 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 proposed 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Service Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0929; Directorate Identifier 2014–NM–218–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–32, dated September 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. The MCAI states:

> There have been multiple in-service reports of chafing found on an electrical wiring harness in the aft equipment bay. An investigation determined that the chafing was attributed to contact between the wiring harness and a neighboring hydraulic line. This chafing could cause an electrical short circuit or lead to a malfunction of the flight control system, the engine indication system, or the hydraulic power control system; which could adversely affect the continued safe operation and landing of the aeroplane.
>
> This [Canadian] AD mandates the inspection [general visual inspection], rectification as required [repair of damage (including wear and chafing)], and modification of the wiring harness installation to ensure the correct wiring routing and a minimum clearance between the wire and the hydraulic line is maintained.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0929.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Service Bulletin 100–24–24, dated June 6, 2014. The service information describes procedures for an inspection, repair if necessary, and modification to reroute wiring harness installation to prevent contact with the hydraulic line. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 107 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $64 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $43,228, or $404 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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

For the reasons discussed above, I certify this proposed regulation:

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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):

Bombardier, Inc.: Docket No. FAA–2015–0929; Directorate Identifier 2014–NM–218–AD.

(a) Comments Due Date

We must receive comments by June 22, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, having serial numbers 20003 through 20382 inclusive, 20384, and 20386.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by multiple reports of chafing found on an electrical wiring harness in the aft equipment bay, caused by contact between the wiring harness and a neighboring hydraulic line. We are issuing this AD to detect and correct chafing on an electrical wiring harness which could cause an electrical short circuit or lead to a malfunction of the flight control system, the engine indication system, or the hydraulic power control system; which could adversely affect the continued safe operation and landing of the airplane.

(f) Compliance

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

(g) Inspection, Repair, and Preventive Modification

Within 36 months after the effective date of this AD, do the actions required by paragraph (g)(1) and (g)(2) of this AD.

(1) Do a one-time general visual inspection to detect damage (including wear and chafing) of the wiring harness, in accordance with the Accomplishment Instructions of Bombardier, Inc. Service Bulletin 100–24–24, dated June 6, 2014. Repair any damage before further flight, in accordance with the Accomplishment Instructions of Bombardier, Inc. Service Bulletin 100–24–24, dated June 6, 2014; except, where Bombardier, Inc. Service Bulletin 100–24–24, dated June 6, 2014, specifies to contact Bombardier for repair instructions, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(2) Modify the wiring harness routing in accordance with the Accomplishment Instructions of Bombardier, Inc. Service Bulletin 100–24–24, dated June 6, 2014.

(h) Definition of General Visual Inspection

For the purposes of this AD, a general visual inspection is a visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.

(i) 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, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–32, dated September 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0929.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* 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.

Issued in Renton, Washington, on April 13, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10947 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1275; Directorate Identifier 2014–NM–070–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2004–14–09, for certain Airbus Model A320–211, –212, and –231 airplanes. AD 2004–14–09 currently requires repetitive inspections for fatigue cracking of the lower surface panel on the wing center box, and repair if necessary; and modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. Since we issued AD 2004–14–09, we have determined that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the chromic acid anodizing (CAA) protection, which would adversely affect fatigue crack protection. This proposed AD would reduce the compliance times for the repetitive inspections, and would require a repair for certain airplanes. We are proposing this AD to detect and correct fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 22, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 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.

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–2015–1275; 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 proposed 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1275; Directorate Identifier 2014–NM–070–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 29, 2004, we issued AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004). AD 2004–14–09 requires actions intended to address an unsafe condition on the products listed above. AD 2004–14–09 superseded AD 98–22–05, Amendment 39–10851 (63 FR 56542, October 22, 1998).

Since we issued AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), we have determined that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the CAA protection, which would adversely affect fatigue crack protection.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0065, dated March 14,

2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Model A320–211, –212, and –231 airplanes. The MCAI states:

During center fuselage certification full scale test, damage was found in the center wing box (CWB) lower surface panel.

This condition, if not detected and corrected, could affect the structural integrity of the CWB.

To prevent such damage, Airbus developed mod 22418 which consists in shot-peening of the lower panel in the related area. Mod 22418 has been embodied in production from aeroplane [manufacturer serial number] (MSN) 0359. For unmodified in-service aeroplanes, Airbus issued Service Bulletin (SB) A320–57–1082 to introduce repetitive High Frequency Eddy Current (HFEC) inspections on the external face of the center wing box lower panel between Frame (FR) 41 and FR42 to detect damage.

DGAC [Direction Générale de l'Aviation Civile] France issued AD 2002–342 [*http://ad.easa.europa.eu/blob/20023420tb_superseded.pdf/AD_F-2002-342_1*] to require these inspections and, depending on findings, applicable corrective action(s). Airbus also issued SB A320–57–1043 as an optional terminating action for the repetitive inspections required by DGAC France AD 2002–342.

Since that [DGAC] AD was issued, the results of a survey, carried out on the A320 fleet, highlighted some differences between the mission parameters, mainly on the weight of fuel at landing and on the average flight duration, which are higher than those defined for the analysis of the fatigue related tasks.

These findings have led to an adjustment of the A320 reference fatigue mission. Consequently, the threshold and intervals of these repetitive inspections have been revised and a new threshold figure expressed in flight hours (FH) has been established.

In addition, it has been identified that, on aeroplanes that have been modified in accordance with Airbus SB A320–57–1043 (Airbus mod 22418) at Revision 05 or an earlier Revision, the shot peening may have been improperly done on the Chromic Acid Anodizing (CAA) protection, which has no fatigue benefit effect. Therefore, the inspections per Airbus SB A320–57–1082 are required again on these aeroplanes.

Consequently, new shot-peening procedures with proper CAA protection removal instructions have been developed and their embodiment through Airbus SB A320–57–1043 Revision 06 cancels the repetitive inspections per Airbus SB A320–57–1082, as required by DGAC France AD 2002–342.

For the reasons described above, this new [EASA] AD retains the requirements of DGAC France AD 2002–342, which is superseded, but requires these actions to be accomplished within reduced thresholds and intervals. In addition, the optional terminating action provision (SB A320–57–1043) is amended by including reference to the SB at Revision 06. The optional terminating action described in Airbus Service Bulletin A320–57–1043, Revision 06, dated December 5, 2013, is accomplishing shot peening in the radius of the milling step between stiffeners 13 and 14 near the fuel pump aperture.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1275.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–57–1043, Revision 06, dated December 5, 2013. This service bulletin describes procedures for shot peening in the radius of the milling step between stiffeners 13 and 14 near the fuel pump aperture.

Airbus has also issued Service Bulletin A320–57–1082, Revision 04, dated December 5, 2013. This service bulletin describes procedures for inspections for cracking of the lower surface panel on the wing center box.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 46 airplanes of U.S. registry.

The actions that are required by AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), and retained in this proposed AD take about 25 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2004–14–09 is $2,125 per product.

The new requirements of this proposed AD would add no additional economic burden.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need these actions.

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

For the reasons discussed above, I certify this proposed regulation:

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 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 removing Airworthiness Directive (AD) 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), and adding the following new AD:

Airbus: Docket No. FAA–2014–1275; Directorate Identifier 2014–NM–070–AD.

(a) Comments Due Date

We must receive comments by June 22, 2015.

(b) Affected ADs

This AD replaces AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004).

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 22418 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the chromic acid anodizing (CAA) protection, which would adversely affect fatigue crack protection. We are issuing this AD to detect and correct fatigue cracking of the lower surface panel on the wing center box (WCB), which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (a) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. Except as provided by paragraph (k) of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 60 days after November 27, 1998 (the effective date of AD 98–22–05, Amendment 39–10851 (63 FR 56542, October 22, 1998)), whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Repeat the HFEC inspection thereafter at intervals not to exceed 7,500 flight cycles until the actions required by paragraph (i) of this AD are accomplished.

(h) Retained Repair, With No Changes

This paragraph restates the requirements of paragraph (b) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. Except as provided by paragraph (j) of this AD, if any cracking is detected during any inspection required by paragraph (g) of this AD: Prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Accomplishment of the repair constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for the repaired area only.

(i) Retained Inspection/Modification/Repair, With Terminating Action

This paragraph restates the requirements of paragraph (c) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with terminating action provided. Prior to the accumulation of 25,000 total flight cycles, or within 60 days after November 27, 1998 (the effective date of AD 98–22–05, Amendment 39–10851 (63 FR 56542, October 22, 1998)), whichever occurs later: Perform an HFEC inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Accomplishment of the initial inspection required by paragraph (p) of this AD constitutes terminating action for the inspection requirements of this paragraph.

(1) If no cracking is detected: Prior to further flight, modify the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997; or Revision 05, dated April 30, 2002. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (g) of this AD.

(2) Except as provided by paragraph (j) of this AD: If any cracking is detected, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002; and modify any uncracked area, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of paragraph (g) of this AD.

(j) Retained Service Bulletin Exception, With No Changes

This paragraph restates the requirements of paragraph (d) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. If any cracking is detected during any inspection required by paragraph (h) or (i)(2) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(k) Retained Provision for Certain Inspection Exception, With No Changes

This paragraph restates the provision of paragraph (e) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. The actions required by paragraph (g) of this AD are not required to be accomplished if the requirements of paragraph (i) of this AD are accomplished at the time specified in paragraph (g) of this AD.

(l) Retained Initial Inspection, With Terminating Action

This paragraph restates the requirements of paragraph (f) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with terminating action provided. For airplanes on which neither the inspection required by paragraph (g) of this AD, nor the modification required by paragraph (i)(1) of this AD has been done before August 13, 2004 (the effective date of AD 2004–14–09): Perform an HFEC inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002; at the later of the times specified in paragraphs (l)(1) and (l)(2) of this AD. Accomplishment of the inspection required by this paragraph terminates the requirements of paragraph (g) of this AD. Accomplishment of the initial inspection required by paragraph (p) of this AD terminates the inspection requirements of this paragraph.

(1) Prior to the accumulation of 13,200 total flight cycles or 39,700 total flight hours, whichever is first.

(2) Prior to the accumulation of 20,000 total flight cycles, or within 3,500 flight cycles after August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004)), whichever is later.

(m) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. If no cracking is detected during the inspection required by paragraph (g) or (l) of this AD: Repeat the inspection required by paragraph (l) of this AD at the applicable time specified in paragraph (m)(1) or (m)(2) of this AD. Accomplishment of the modification required by paragraph (i)(1) of this AD terminates the requirements of this paragraph.

(1) For airplanes on which the inspections required by paragraph (g) of this AD have been initiated before August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004)): Do the next inspection within 5,700 flight cycles after accomplishment of the last inspection, or within 1,800 flight cycles after

August 13, 2004, whichever is later. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(2) For airplanes on which no inspection required by paragraph (g) of this AD has been done before August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004)): Do the next inspection within 5,700 flight cycles after accomplishment of the inspection required by paragraph (l) of this AD. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(n) Retained Repair/Modification, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. If any cracking is detected during any inspection required by paragraph (l) or (m) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002; and modify any uncracked area, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Where Airbus Service Bulletin A320–57–1082 specifies to contact Airbus for an appropriate repair action: Prior to further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent). Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of paragraphs (g) through (n) of this AD.

(o) New Requirement of This AD: Repair of Certain Airplanes

For airplanes on which the actions described in Airbus Service Bulletin A320–57–1043 have not been accomplished, and on which a repair has been accomplished, as described in Airbus Service Bulletin A320–57–1082, dated October 31, 1996; Revision 01, dated December 10, 1997; Revision 02, dated July 26, 1999; or Revision 03, dated April 30, 2002: Within 30 days after the effective date of this AD, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the European Aviation Safety Agency (EASA); or Airbus's EASA design organization approval (DOA).

(p) New Requirement of This AD: Repetitive WCB Inspections

At the applicable time specified in paragraphs (p)(1) and (p)(2) of this AD: Do an HFEC inspection for cracking of the lower surface panel on the WCB, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1082, Revision 04, dated December 5, 2013. Repeat the inspection of the lower surface panel on the WCB thereafter at intervals not to exceed 7,200 flight cycles or 14,400 flight hours, whichever occurs first. Accomplishment of the initial inspection required by this paragraph terminates the inspections required by paragraphs (g), (i), and (l) of this AD.

(1) For airplanes on which the actions described in Airbus Service Bulletin A320–57–1043 have not been done: At the later of the times specified in paragraphs (p)(1)(i) and (p)(1)(ii) of this AD.

(i) Before the accumulation of 20,700 flight cycles or 41,400 flight hours, whichever occurs first since first flight of the airplane.

(ii) Within 7,200 flight cycles or 14,400 flight hours, whichever occurs first after doing the most recent inspection as specified in Airbus Service Bulletin A320–57–1082, dated October 31, 1996; Revision 01, dated December 10, 1997; Revision 02, dated July 26, 1999; or Revision 03, dated April 30, 2002.

(2) For airplanes on which the actions specified in Airbus Service Bulletin A320–57–1043, dated February 16, 1993; Revision 01, dated June 14, 1996; Revision 02, dated May 14, 1997; Revision 03, dated October 24, 1997; Revision 04, dated March 15, 1999; or Revision 05, dated April 30, 2002; have been done: At the latest of the times specified in paragraphs (p)(2)(i), (p)(2)(ii), and (p)(2)(iii) of this AD.

(i) Within 7,200 flight cycles or 14,400 flight hours, whichever occurs first since doing the actions specified in Airbus Service Bulletin A320–57–1043.

(ii) Within 3,750 flight cycles or 7,500 flight hours, whichever occurs first after July 31, 2012 (as described in Airbus Service Bulletin A320–57–1082, Revision 04, dated December 5, 2013).

(iii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first after the effective date of this AD.

(q) New Requirement of This AD: Repair of WCB

If any crack is found during any inspection required by paragraph (p) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the EASA; or Airbus's EASA DOA.

(r) New Optional Terminating Action

Modification of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1043, Revision 06, dated December 5, 2013, constitutes terminating action for the actions required by paragraph (p) of this AD.

(s) Credit for Previous Actions

This paragraph provides credit for applicable actions required by paragraphs (g) through (n) of this AD, if those actions were performed before the effective date of this AD using the applicable Airbus Service Information provided in paragraphs (s)(1) through (s)(8) of this AD.

(1) Airbus Service Bulletin A320–57–1043, dated February 16, 1993, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A320–57–1043, Revision 01, dated June 14, 1996, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, which was incorporated by reference on November 27, 1998 (63 FR 56542, October 22, 1998).

(4) Airbus Service Bulletin A320–57–1043, Revision 03, dated October 24, 1997, which is not incorporated by reference in this AD.

(5) Airbus Service Bulletin A320–57–1043, Revision 04, dated May 15, 1999, which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, which was incorporated by reference on November 27, 1998 (63 FR 56542, October 22, 1998).

(7) Airbus Service Bulletin A320–57–1082, Revision 02, dated July 26, 1999, which is not incorporated by reference in this AD.

(8) Airbus Service Bulletin A320–57–1082, Revision 03, dated April 30, 2002, which was incorporated by reference on August 13, 2004 (69 FR 41398, July 9, 2004).

(t) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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 Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(u) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0065, dated March 14, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1275.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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 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.

Issued in Renton, Washington, on April 29, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–10949 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0565; Airspace Docket No. 14–ACE–7]

Proposed Revocation of Class D and E Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice of proposed rulemaking proposes to remove Class D airspace and Class E surface area airspace at Independence Municipal Airport, Independence, KS. In an NPRM published in the **Federal Register** September 25, 2014, the FAA proposed to remove Class D airspace at Independence Municipal Airport, Independence, KS. The FAA has reassessed the proposal to include the removal of the associated Class E surface area airspace. The closure of the airport's air traffic control tower has necessitated the need for this proposal.

DATES: Comments must be received on or before June 22, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0565/Airspace Docket No. 14–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this proposed incorporation by reference material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7654.

SUPPLEMENTARY INFORMATION:

History

On September 25, 2014, the FAA published a NPRM to remove Class D airspace at Independence Municipal Airport, Independence, KS, as the air traffic control tower has closed (79 FR 57483). The comment period closed November 10, 2014. No comments were received. Subsequent to publication, the FAA reassessed the proposal to include the removal of the associated Class E surface area airspace at Independence Municipal Airport, Independence, KS. Also, the title section is amended to include Class E airspace. The FAA seeks comments on this SNPRM.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0565/Airspace Docket No. 14–ACE–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of SNPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Supplemental Proposal

This supplemental proposal proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class D airspace and the associated Class E surface area airspace at Independence Municipal Airport, Independence, KS. The closing of the airport's air traffic control tower has made this action necessary. Also, the Title section is amended to read ''Proposed Revocation of Class D and E Airspace; Independence, KS''.

Class D and E airspace areas are published in Paragraph 5000 and 6002, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Independence Municipal Airport, KS.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014 is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Independence, KS [Removed]

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE KS E2 Independence, KS [Removed]

Issued in Fort Worth, TX, on April 28, 2015.

Humberto D. Melendez,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–10515 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1067; Airspace Docket No. 14–ANM–15]

Proposed Establishment and Amendment of Class E Airspace; Bremerton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish and modify Class E airspace at Bremerton National Airport, Bremerton, WA, to accommodate new Standard Instrument Approach Procedures (SIAPs) at Bremerton National airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before June 22, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2014–1067; Airspace Docket No. 14–ANM–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this proposed incorporation by reference material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–1067/Airspace Docket No. 14–ANM–15.'' The postcard

will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace and establishing Class E airspace extending upward from 700 feet above the surface at Bremerton National Airport, Bremerton, WA. After a review of the airspace, the FAA found modification of the airspace necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport. Class E surface area airspace would be adjusted to be defined from the Bremerton National Airport reference point versus the Kitsap NDB, with segments extending from the 4.1-mile radius of the airport to 7 miles southwest, and 6.1 miles northeast of the airport. Class E airspace extending upward from 700 feet above the surface would be established within a 6.1-mile radius of the airport, with segments extending from the 6.1-mile radius to 8.1 miles southwest, and 7.6 miles northeast of the airport.

Class E airspace designations are published in paragraph 6002, and 6005, respectively, of FAA Order 7400.9Y, dated August 6, 2014 and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Bremerton National Airport, Bremerton, WA.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ANM WA E2 Bremerton, WA [Amended]

Bremerton National Airport, WA
(Lat. 47°29′25″ N., long. 122°45′53″ W.)

That airspace within a 4.1-mile radius of Bremerton National Airport, and within 2 miles each side of the 33° bearing from the airport extending from the 4.1-mile radius to 6.1 miles northeast of the airport, and within 2 miles each side of the 213° bearing from the airport extending from the 4.1-mile radius to 6.1 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Bremerton, WA [New]

Bremerton National Airport, WA
(Lat. 47°29′34″ N., long. 122°45′53″ W.)

That airspace extending upward from 700 feet above the surface within 2 miles each side of the 33° bearing from Bremerton National Airport extending from 6.1-miles to 7.6 miles northeast of the airport, and within 2 miles each side of the 213° bearing from the airport extending from the 6.1-mile radius of the airport to 8.1 miles southwest of the airport.

Issued in Seattle, Washington, on April 27, 2015.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center, AJV–W2.

[FR Doc. 2015–10499 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 150324296–5296–01]

RIN 0605–AA38

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes revisions to the Department of Commerce's (Department) regulations under the Privacy Act. The Privacy Act regulations are being updated to make technical changes to the applicable exemptions.

DATES: To be considered, written comments must be submitted on or before June 8, 2015.

Unless comments are received, the amended system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 0605–AA38, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 482–0827. Include the RIN 0605–AA38 in the subject line.
- *Mail:* Ms. Brenda Dolan, Departmental Freedom of Information & Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, 1401 Constitution Avenue NW., Suite A300, Room A326, Washington, DC 20230.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Dolan, Departmental Freedom of Information & Privacy Act Officer, Office of Privacy and Open Government, U.S. Department of Commerce, 202–482–3258.

SUPPLEMENTARY INFORMATION:

Public Participation: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Department. If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of the comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please *see* the **FOR FURTHER INFORMATION CONTACT** paragraph.

This rule proposes revisions to the Department's regulations under the Privacy Act. In particular, the action will amend the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Dated: April 28, 2015.

Catrina D. Purvis,

Chief Privacy Officer and Director for Open Government.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR part 4 as follows:

PART 4—[AMENDED]

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

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3717; 41 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

■ 2. Amend § 4.33 by adding paragraph (b)(4) to read as follows;

§ 4.33 General exemptions.

* * * * *

(4) *Access Control and Identity Management System*—COMMERCE/DEPT–25. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel.

■ 3. Amend § 4.34 by revising paragraphs (a)(1), paragraph (b) introductory text, paragraphs (b)(1). (b)(2)(i), (b)(2)(i)(C), (b)(2)(i)(F) and (b)(4)(i).

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are: COMMERCE/BIS–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–5, COMMERCE–PAT–TM–4, COMMERCE/DEPT–12, COMMERCE/DEPT–13, COMMERCE/DEPT–14, and COMMERCE/DEPT–25.

* * * * *

(b) The specific exemptions determined to be necessary and proper

with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/ITA–1, COMMERCE/NOAA–5, and COMMERCE/DEPT–25 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.

* * * * *

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

* * * * *

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–5, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

* * * * *

(F) Access Control and Identity Management System—COMMERCE/DEPT–25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

* * * * *

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–1;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–3;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3:

(H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records— Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT–13;

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14; and

(K) Access Control and Identity Management System—COMMERCE/DEPT–25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid.

* * * * *

[FR Doc. 2015–10451 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102656–15; REG–107548–11]

RIN 1545–BM61; 1545–BK10

Notional Principal Contracts; Swaps With Nonperiodic Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; 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 that amend the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts. These regulations provide that, subject to certain exceptions, a notional principal contract with a nonperiodic payment, regardless of whether it is significant, must be treated as two separate transactions consisting of one or more loans and an on-market, level payment swap. The regulations provide an exception from the definition of United States property. These regulations affect parties making and receiving payments under notional principal contracts, including United States shareholders of controlled foreign corporations and tax-exempt organizations. The text of the temporary regulations also serves as the text of these proposed regulations. This document withdraws the notice of proposed rulemaking (REG–107548–11; RIN 1545–BK10) published in the **Federal Register** on May 11, 2012 (77 FR 27669).

DATES: Comments and requests for a public hearing must be received by August 6, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–102656–15), 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–102656–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–102656–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 446, Alexa T. Dubert or Anna H. Kim at (202) 317–6895; concerning the proposed regulations under section 956, Kristine A. Crabtree at (202) 317–6934; concerning submissions of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On May 11, 2012, the Treasury Department and the IRS published temporary regulations under section 956 (TD 9589) in the **Federal Register** (77 FR 27612). On the same date, a notice of proposed rulemaking (REG–107548–11) by cross-reference to the temporary regulations was published in the **Federal Register** (77 FR 27669). This document withdraws those proposed regulations (REG–107548–11; RIN 1545–BK10) and provides new proposed regulations (REG–102656–15).

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). The final and temporary regulations amend the regulations under section 446 of the Internal Revenue Code (Code) relating to the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts for U.S. federal income tax purposes. The final and temporary regulations also amend the regulations under section 956 of the Code regarding an exception from the definition of United States property. The text of the final and temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains those regulations and these proposed 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 13653. 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 these 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 comment on its impact on small entities.

Comments and Requests for 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. The Treasury Department and the IRS 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Alexa T. Dubert and Anna H. Kim of the Office of 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.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–107548–11 and RIN 1545–BK10) that was published in the **Federal Register** on May 11, 2012 (77 FR 27669) is withdrawn.

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 1.446–3 is amended by:

■ 1. Revising paragraph (g)(4).

■ 2. Revising paragraph (g)(6), *Examples 2, 3* and *4.*

■ 3. Revising paragraph (j)(2).

The revisions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(g) * * *

(4) [The text of the proposed amendment to § 1.446–3(g)(4) is the same as the text of § 1.446–3T(g)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) * * *

Example 2. [The text of proposed amendment to § 1.446–3(g)(6) *Example 2* is the same as the text of § 1.446–3T(g)(6) *Example 2* published elsewhere in this issue of the **Federal Register**].

Example 3. [The text of proposed amendment to § 1.446–3(g)(6) *Example 3* is the same as the text of § 1.446–3T(g)(6) *Example 3* published elsewhere in this issue of the **Federal Register**].

Example 4. [The text of proposed amendment to § 1.446–3(g)(6) *Example 4* is the same as the text of § 1.446–3T(g)(6) *Example 4* published elsewhere in this issue of the **Federal Register**].

* * * * *

(j) * * *

(2) [The text of the proposed amendment to § 1.446–3(j)(2) is the same as the text of § 1.446–3T(j)(2) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.956–2 is amended by revising paragraphs (b)(1)(xi) and (f) to read as follows:

§ 1.956–2 Definition of United States property.

* * * * *

(b)(1)(xi) [The text of this proposed amendment is the same as the text of § 1.956–2T(b)(1)(xi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of this proposed amendment is the same as the text of § 1.956–2T(f) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–11093 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2002

[FDMS No. NARA–15–0001; NARA–2015–037]

RIN 3095–AB80

Controlled Unclassified Information

AGENCY: Information Security Oversight Office, NARA.

ACTION: Proposed rule.

SUMMARY: As the Federal Government's Executive Agent for Controlled Unclassified Information (CUI), the Information Security Oversight Office (ISOO) of the National Archives and Records Administration (NARA) implements the Federal Government-wide CUI Program. As part of that responsibility, ISOO proposes this rule to establish policy for agencies on designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI, self-inspection and oversight requirements, and other facets of the Program.

DATES: Submit comments on or before July 7, 2015.

ADDRESSES: You may submit comments, identified by RIN 3095–AB80, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulation_comments@nara.gov.* Include RIN 3095–AB80 in the subject line of the message.
- *Fax:* 301–837–0319. Include RIN 3095–AB80 in the subject line of the fax cover sheet.
- *Mail* (for paper, disk, or CD–ROM submissions. Include RIN 3095–AB80 on the submission): Regulations Comment Desk, Strategy Division (SP); Suite 4100; National and Archives Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.
- *Hand delivery or courier:* Deliver comments to front desk at the address above.

Instructions: All submissions must include NARA's name and the regulatory information number for this rulemaking (RIN 3095–AB80). We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at *regulations_comments@nara.gov*, or by telephone at 301–837–3151. You may also find more information about the CUI Program, and some FAQs, on

NARA's Web site at *http://www.archives.gov/cui/*.

SUPPLEMENTARY INFORMATION:

Background. The President is committed to making the Government more open to the American people, as outlined in his January 21, 2009, memorandum to the heads of executive branch agencies. However, the Government must still protect some unclassified information, pursuant to and consistent with applicable laws, regulations, and Government-wide policies. This information is called Controlled Unclassified Information (CUI).

Prior to Executive Order 13556, Controlled Unclassified Information, 75 FR 68675 (November 4, 2010) (the Order), more than 100 different markings for such information existed across the executive branch. This *ad hoc*, agency-specific approach created inefficiency and confusion, led to a patchwork system that failed to adequately safeguard information requiring protection, and unnecessarily restricted information-sharing.

As a result, the Order established the CUI Program to standardize the way the executive branch handles information that requires safeguarding or dissemination controls (excluding information that is classified under Executive Order 13526, Classified National Security Information, 75 FR 707 (December 29, 2009), or any predecessor or successor order; or the Atomic Energy Act of 1954 (42 U.S.C. § 2011, *et seq.*), as amended.

To develop policy and provide oversight for the CUI Program, the Order also appointed NARA as the CUI Executive Agent. NARA has delegated this authority to the Director of ISOO, a NARA component.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is ''significant'' under section 3(f) of Executive Order 12866 because it sets out a new program for Federal agencies. The Office of Management and Budget (OMB) has reviewed this regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this proposed rule will not have a significant adverse economic impact on small entities. However, information on the number of small entities contracting, or wishing to contract, with the executive branch that have not already implemented appropriate information systems standards for handling CUI is unreported and difficult to collect, in part because it could reflect adversely on a contractor in other ways. As a result, while NARA believes from all available information that the economic impact would be minimal, if any, we are opening this issue to public comment in addition to the content of the proposed rule, in case reviewers have additional information to the contrary that was not available to NARA.

The CUI Program provides a unified system for handling unclassified information that requires safeguarding or dissemination controls, and sets consistent, executive branch-wide standards and markings for doing so. The CUI Program has established controls pursuant to and consistent with already-existing applicable law, Federal regulations, and Government-wide policy. However, because those authorities, as well as *ad hoc* agency policies and practices, were often applied in different ways by different agencies, the CUI Program also establishes unambiguous policy, requirements, and consistent standards.

The Order establishes that the CUI Executive Agent, designated as NARA, ''shall develop and issue such directives as are necessary'' to implement the CUI Program (Section 4b). NARA has delegated this authority to the Director of the Information Security Oversight Office (ISOO). Consistent with this tasking, and with the CUI Program's mission to establish uniform policies and practices across the Federal Government, NARA is issuing a regulation, to establish the required controls and markings Government-wide. There is no viable alternative to a rule for meeting the Order's mandate to establish consistent information security standards Government-wide. A regulation binds agencies throughout the executive branch to uniformly apply the Program's standard safeguards, markings, and disseminating and decontrol requirements. The proposed rule contains a consistent program that NARA developed in consultation with affected stakeholders, including private industry and Federal agencies. While developing this program, NARA conducted working group discussions and surveys, consolidated and streamlined current practices, and developed initial drafts that underwent both formal and informal agency comment and CUI Executive Agent comment adjudication for individual policy elements.

NARA believes that this proposed rule will benefit industry that contracts with the Federal Government, including small businesses. In the present contractor environment, differing requirements and conflicting guidance from agencies for the same types of information gives rise to confusion and inefficiencies for contractors working with more than one agency or handling information originating from different agencies. A single standard that de-conflicts requirements for contractors or potential contractors when contracting with multiple Government agencies will be simpler to execute and reduce costs. Because the regulation's uniform controls derive from already-required laws, regulations, and Government-wide policies, the standards are already ones with which businesses should be complying and the impact of the rule should be minimal or non-existent.

Those entities that currently do not implement information systems security controls for CUI consistent with requirements contained in the regulation will need to make changes and implement new practices, which could therefore have an impact on such businesses. Consistent with the Order, these requirements are based on applicable Government-wide standards and guidelines issued by the National Institute of Standards and Technology (NIST), and applicable policies established by OMB (Section 6a3). These standards, which OMB and NIST established, have been in effect for some time, and were not created by this proposed rule. Rather, the proposed rule requires use of these standards in the same way throughout the executive branch, thereby reducing current complexity for agencies and contractors. The potential impact on businesses currently not in compliance with these standards arises from the possibility that some might need to take actions to bring themselves into compliance with

already-existing requirements if they are not already. From all available information, NARA believes this impact will be minimal, but reporting on non-compliance with these OMB and NIST standards is limited. If any businesses are not in compliance with these requirements, or are substantially out of compliance, the impact on those entities may be significant.

NARA has taken steps, however, to alleviate the difficulty for contractors and small businesses of complying with information systems requirements, whether they already comply or will need to comply in future. Many of the security controls contained in the NIST guidelines are specific to Government systems, and thus have been difficult for contractors to implement with their own already-existing systems. This has also limited some businesses from competing for Federal contracts. Non-Federal systems are often built using different processes from the Government-specific ones outlined in the NIST guidelines, even while achieving the same standard of protection as set forth in the Federal Information Processing Standards (FIPS). NARA has therefore partnered with NIST to develop a special publication on applying the information systems security requirements in the contractor environment. Doing so should make it easier for businesses to comply with the standards using the systems they already have in place, rather than trying to use the Government-specific approaches currently described. This publication has already undergone one round of public comment as NIST SP–800–171 and is undergoing a second round of public comment until May 12, 2015; we expect to finalize it in June 2015.

The CUI Executive Agent is also planning a single Federal Acquisitions Regulation (FAR) clause that will apply the requirements of the proposed rule to the contractor environment and further promote standardization to benefit a substantial number of businesses, including small entities that may be struggling to meet the current range and type of contract clauses. In the process of this three-part plan (rule, NIST publication, standard FAR clause), businesses will not only receive streamlined and uniform requirements for any unclassified information security needs, but will have information systems requirements tailored to contractor systems, allowing the businesses to help develop the requirements and to be in compliance with Federal uniform standards with less difficulty than currently. Businesses that currently meet all standards will have a clearer and easier time doing so in the future with virtually no negative impact, and businesses that do not currently meet standards will be able to bring themselves into compliance more easily as well, thus reducing the potential impact coming into compliance would have on them.

Despite all of this, there may still be a significant impact on small businesses, related to bringing themselves into compliance with existing standards that will be applied uniformly under this rule. NARA does not have data on how many small businesses may be impacted by this rule, or to what degree, because such information on compliance with the standards involved is not tracked for small businesses. NARA therefore opens this topic for input from small businesses during the public comment period.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 2002

Administrative practice and procedure, Archives and records, Controlled unclassified information, Freedom of information, Government in the Sunshine Act, Information, Information security, National security information, Open government, Privacy.

For the reasons stated in the preamble, NARA proposes to amend 32 CFR, Chapter XX, by adding part 2002 to read as follows:

PART 2002—CONTROLLED UNCLASSIFIED INFORMATION (CUI)

Subpart A—General Information

Sec.

2002.1 Purpose and scope.
2002.2 Definitions.
2002.3 CUI Executive Agent.
2002.4 Roles and responsibilities.

Subpart B—Key Elements of the CUI Program

2002.10 The CUI Registry.
2002.11 CUI categories and subcategories.
2002.12 Safeguarding.
2002.13 Accessing and disseminating.
2002.14 Decontrolling.
2002.15 Marking.
2002.16 Waivers of CUI requirements in exigent circumstances.
2002.17 Limitations on applicability of agency CUI policies.

Subpart C—CUI Program Management

2002.20 Education and training.
2002.21 Agency self-inspection program.
2002.22 Challenges to designation of information as CUI.
2002.23 Dispute resolution.
2002.24 Misuse of CUI.
2002.25 Sanctions for misuse of CUI.
2002.26 Transfer of records.
2002.27 CUI and the Freedom of Information Act (FOIA).
2002.28 CUI and the Privacy Act.

Authority: E.O. 13556, 75 FR 68675, 3 CFR, 2010 Comp., pp. 267–270.

Subpart A—General Information

§ 2002.1 Purpose and scope.

(a) This part describes the executive branch's Controlled Unclassified Information (CUI) Program (the CUI Program) and establishes policy for designating, handling, and decontrolling information that qualifies as CUI.

(b) The CUI Program standardizes the way the executive branch handles sensitive information that requires protection under laws, regulations, or Government-wide policies, but that does not qualify as classified under Executive Order 13526, Classified National Security Information, December 29, 2009 (3 CFR, 2010 Comp., p. 298), or the Atomic Energy Act of 1954 (42 U.S.C. 2011, *et seq.*), as amended.

(c) Prior to the CUI Program, agencies often employed *ad hoc*, agency-specific policies, procedures, and markings to handle this information. This patchwork approach caused agencies to mark and handle information inconsistently, implement unclear or unnecessarily restrictive disseminating policies, and create obstacles to sharing information.

(d) An executive branch-wide CUI policy balances the need to safeguard CUI with the public interest in sharing information appropriately and without unnecessary burdens.

(e) This part applies to all executive branch agencies that designate or handle information that meets the standards for CUI. This part also applies, by extension, to agency practices involving non-executive branch CUI recipients, as follows:

(1) *Contractors handling CUI for an agency.* Executive branch agencies must

include a requirement to comply with Executive Order 13556, Controlled Unclassified Information, November 4, 2010 (3 CFR, 2011 Comp., p. 267) (the Order), and this part in all contracts that require a contractor to handle CUI for the agency. The contractual requirement must be consistent with standards prescribed by the CUI Executive Agent.

(2) *Other non-executive branch entities.* When feasible, executive branch agencies should enter formal information-sharing agreements and include a requirement that any non-executive branch party to the agreement comply with the Order, this part, and the CUI Registry. When an agency's mission requires it to disseminate CUI without entering into an information-sharing agreement, the agency must communicate to the recipient that because of the sensitive nature of the information, the Government strongly encourages the non-executive branch entity to protect CUI consistent with the Order, this part, and the CUI Registry.

(f) This part rescinds Controlled Unclassified Information (CUI) Office Notice 2011–01: Initial Implementation Guidance for Executive Order 13556 (June 9, 2011).

(g) This part creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(h) Nothing in this part alters, limits, or supersedes a requirement stated in laws, regulations, or Government-wide policies. Where laws, regulations, or Government-wide policies articulate the requirements for protection of unclassified information, this part accommodates and recognizes those requirements as ''CUI Specified.'' However, where agency-specific policy or *ad hoc* practices articulate requirements for protection of unclassified information, the CUI Executive Agent has the authority under the Order to establish control policy. In such cases, this part would override such agency-specific or *ad hoc* requirements if they are in conflict.

§ 2002.2 Definitions.

Agency includes any ''executive agency,'' as defined in 5 U.S.C. 105; the United States Postal Service; and any other independent entity within the executive branch that designates or handles CUI.

Authorized holder is an individual, organization, or group of users that is permitted to designate or handle CUI, consistent with this part.

Classified information is information that Executive Order 13526, ''Classified National Security Information,'' December 29, 2009 (3 CFR, 2010 Comp., p. 298), or the Atomic Energy Act of 1954, as amended, requires to have classified markings and protection against unauthorized disclosure.

Controlled environment is any area or space an authorized holder deems to have adequate physical or procedural controls (*e.g.*, barriers and managed access controls) to protect CUI from unauthorized access or disclosure.

Control level is a general term that encompasses the category or subcategory of specific CUI, along with any specific safeguarding and disseminating requirements.

Controlled Unclassified Information (CUI) is information that laws, regulations, or Government-wide policies require to have safeguarding or dissemination controls, excluding classified information (see definition of *classified information*, above).

CUI Basic is the default, uniform set of standards for handling all categories and subcategories of CUI. CUI Basic differs from CUI Specified in that, although laws, regulations, or Government-wide policies establish the CUI Basic information as protected, it does not specifically spell out any handling standards for that information. The CUI Basic standards therefore apply whenever CUI Specified standards do not cover the involved CUI.

CUI categories and subcategories are those types of information for which laws, regulations, or Government-wide policies requires safeguarding or dissemination controls, and which the CUI Executive Agent has approved and listed in the CUI Registry.

CUI category or subcategory markings are the markings approved by the CUI Executive Agent for the categories and subcategories listed in the CUI Registry.

CUI Executive Agent is the National Archives and Records Administration (NARA), which implements the executive branch-wide CUI Program and oversees Federal agency actions to comply with the Order. NARA has delegated this authority to the Director of the Information Security Oversight Office (ISOO).

CUI Program is the executive branch-wide program to standardize CUI handling by all Federal agencies. The Program includes the rules, organization, and procedures for CUI, established by the Order, this part, and the CUI Registry.

CUI Program manager is an agency official, designated by the agency head or CUI senior agency official, to serve as the official representative to the CUI Executive Agent on the agency's day-to-day CUI Program operations, both within the agency and in interagency contexts.

CUI Registry is the online repository for all information, guidance, policy, and requirements on handling CUI, including everything issued by the CUI Executive Agent other than this part. Agencies and authorized holders must follow the requirements in the CUI Registry. Among other information, the CUI Registry identifies all approved CUI categories and subcategories, provides general descriptions for each, identifies the basis for controls, and sets out handling procedures.

CUI senior agency official is a senior official designated in writing by an agency head and responsible to that agency head for implementation of the CUI Program within that agency. The CUI senior agency official is the primary point of contact for official correspondence, accountability reporting, and other matters of record between the agency and the CUI Executive Agent.

CUI Specified are the sets of standards that apply to CUI categories and subcategories that have specific handling standards required or permitted by authorizing laws, regulations, or Government-wide policies. Only CUI categories and subcategories the CUI Executive Agent approves and designates in the CUI Registry as CUI Specified may use the specified standards rather than CUI Basic standards. Agencies must apply CUI Basic standards to all CUI that is not included in a CUI Specified category in the Registry, or when a CUI Specified authority is silent on any aspect of handling the involved CUI. CUI Specified standards may be more stringent than, or may simply differ from, those required by CUI Basic; the distinction is that the underlying authority spells out the standards for CUI Specified categories and does not for CUI Basic ones.

Decontrolling occurs when an agency removes safeguarding or dissemination controls from CUI that no longer requires such controls.

Designating occurs when an authorized holder determines that a CUI category or subcategory covers a specific item of information and then marks that item as CUI.

Designating agency is the executive branch agency that designates a specific item of information as CUI.

Disseminating occurs when authorized holders transmit, transfer, or provide access to CUI to other authorized holders through any means.

Document means any tangible thing, which constitutes or contains information, and means the original and any copies (whether different from the originals because of notes made on such copies or otherwise) of all writings of every kind and description over which an agency has authority, whether inscribed by hand or by mechanical, facsimile, electronic, magnetic, microfilm, photographic, or other means, as well as phonic or visual reproductions or oral statements, conversations, or events, and including, but not limited to: Correspondence, email, notes, reports, papers, files, manuals, books, pamphlets, periodicals, letters, memoranda, notations, messages, telegrams, cables, facsimiles, records, studies, working papers, accounting papers, computer disks, computer tapes, telephone logs, computer mail, computer printouts, worksheets, sent or received communications of any kind, teletype messages, agreements, diary entries, calendars and journals, printouts, drafts, tables, compilations, tabulations, recommendations, accounts, work papers, summaries, address books, other records and recordings or transcriptions of conferences, meetings, visits, interviews, discussions, or telephone conversations, charts, graphs, indexes, tapes, minutes, contracts, leases, invoices, records of purchase or sale correspondence, electronic or other transcription of taping of personal conversations or conferences, and any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Document also includes the file, folder, exhibits, and containers, and the labels on them, associated with each original or copy. Document also includes voice records, film, tapes, video tapes, email, personal computer files, electronic matter, and other data compilations from which information can be obtained, including materials used in data processing.

Handling is any use of CUI, including but not limited to marking, safeguarding, transporting, disseminating, re-using, and disposing of the information.

Lawful Government purpose is any activity, mission, function, operation, or endeavor that the U.S. Government authorizes or recognizes within the scope of its legal authorities.

Legacy material is unclassified information that was marked or otherwise controlled prior to implementation of the CUI Program.

Limited dissemination is any type of control on disseminating CUI approved for use by the CUI Executive Agent.

Misuse of CUI occurs when someone uses CUI in a manner inconsistent with the policy contained in the Order, this part, and the CUI Registry, or any of the laws, regulations, and Government-wide policy that establish CUI categories and subcategories. This may include intentional violations or unintentional errors in safeguarding or disseminating CUI.

Non-executive branch entity is a person or organization established, operated, and controlled by individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the executive branch of the Federal Government. Such entities may include elements of the legislative or judicial branches of the Federal government; State, interstate, Tribal, local, or foreign government elements; and private or international organizations, including contractors and vendors.

Portion is ordinarily a section within a document, and may include subjects, titles, graphics, tables, charts, bullet statements, sub-paragraphs, bullets points, or other sections, including those within slide presentations.

Protection includes all controls an agency applies or must apply when handling information that qualifies as CUI.

Public release occurs when an agency makes information formerly designated as CUI available to members of the public through the agency's official release processes. Disseminating CUI to non-executive branch entities as authorized does not constitute public release; nor does releasing information to an individual pursuant to the Privacy Act of 1974.

Records are agency records and Presidential papers or Presidential records (or Vice-Presidential), as those terms are defined in 44 U.S.C. 3301 and 44 U.S.C. 2201 and 2207. Records also include such items created or maintained by a Government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

Re-use means incorporating, disseminating, restating, or paraphrasing CUI from its originally designated form into a newly created document.

Self-inspection is an agency's internally managed review and evaluation of its activities to implement the CUI Program.

Unauthorized disclosure occurs when individuals or entities that do not have a lawful Government purpose to access the CUI gain access to it. Unauthorized disclosure may be intentional or unintentional.

Uncontrolled unclassified information is information that neither the Order nor classified information authorities cover as protected. Although this information is not controlled or classified, agencies must still handle it consistently with Federal Information Security Modernization Act (FISMA) requirements.

Working papers are documents or materials, regardless of form, that an agency or user expects to revise prior to creating a finished product.

§ 2002.3 CUI Executive Agent.

(a) Section 2(c) of the Order designates NARA as the CUI Executive Agent to implement this Order and to oversee agency efforts to comply with the Order, this part, and the CUI Registry.

(b) NARA's Director of the Information Security Oversight Office (ISOO) performs the duties assigned to NARA as the CUI Executive Agent.

§ 2002.4 Roles and responsibilities.

(a) The CUI Executive Agent:

(1) Develops and issues policy, guidance, and other materials, as needed, to implement the Order and this part, and to establish and maintain the CUI Program.

(2) Consults with affected agencies, State, local, Tribal, and private sector partners, and representatives of the public on matters pertaining to CUI.

(3) Establishes, convenes, and chairs the CUI Advisory Council (the Council) to address matters pertaining to the CUI Program. The CUI Executive Agent consults with affected agencies to develop and document the Council's structure and procedures, and submits the details to OMB for approval.

(4) Reviews and approves agency policies implementing this part before agencies issue them to ensure their consistency with the Order, this part, and the CUI Registry.

(*5*) Reviews, evaluates, and oversees agencies' actions to implement the CUI Program, to ensure compliance with the Order, this part, and the CUI Registry.

(6) Establishes a management and planning framework, including associated deadlines for phased implementation, based on agency compliance plans submitted pursuant to section 5(b) of the Order, and in consultation with affected agencies and the Office of Management and Budget (OMB).

(7) Approves categories and subcategories of CUI as needed and publishes them in the CUI Registry.

(8) Prescribes standards, procedures, guidance, and instructions for oversight

and agency self-inspection programs, to include performing on-site inspections.

(9) Standardizes forms and procedures to implement the CUI Program.

(10) Considers and resolves, as appropriate, disputes, complaints, and suggestions about the CUI Program from entities in or outside the Government; and

(11) Reports to the President on implementation of the Order and the requirements of this part. This includes publishing a report on the status of agency implementation at least biennially, or more frequently at the discretion of the CUI Executive Agent.

(b) Agency heads:

(1) Ensure agency senior leadership support, and make adequate resources available to implement, manage, and comply with the CUI Program as administered by the CUI Executive Agent.

(2) Designate a CUI senior agency official responsible for ensuring agency implementation, management, and oversight of the CUI Program.

(3) Approve agency policies, as required, to implement the CUI Program.

(c) CUI senior agency officials:

(1) Must be at the Senior Executive Service level or equivalent;

(2) Direct and oversee the agency's CUI Program;

(3) Designate a CUI Program manager;

(4) Ensure the agency has CUI implementing policies and plans, as needed;

(5) Implement an education and training program pursuant to § 2002.20 of this part;

(6) Upon request of the CUI Executive Agent under section 5(c) of the Order, provide an update of CUI implementation efforts for subsequent reporting;

(7) Develop and implement the agency's self-inspection program;

(8) Establish a process to accept and manage challenges to CUI status, consistent with existing processes based in laws, regulations, and Government-wide policies; and

(9) Establish processes and criteria for reporting and investigating misuse of CUI.

(d) The Director of National Intelligence: After consultation with the heads of affected agencies and the Director of the Information Security Oversight Office, may issue directives to implement this part with respect to the protection of intelligence sources, methods, and activities. Such directives must be consistent with the Order, this part, and the CUI Registry.

Subpart B—Key Elements of the CUI Program

§ 2002.10 The CUI Registry.

(a) The CUI Executive Agent maintains the CUI Registry, which serves as the central repository for all information, guidance, policy, and requirements on handling CUI, including authorized CUI categories and subcategories, associated markings, and applicable decontrolling procedures.

(b) The CUI Registry:

(1) Is the sole authoritative repository for information on CUI except the Order and this part;

(2) Is publicly accessible;

(3) Includes citation(s) to laws, regulations, or Government-wide policies that form the basis for each category and subcategory; and

(4) Notes any sanctions or penalties for misuse of each category or subcategory of CUI that are included in applicable statutes or regulations.

§ 2002.11 CUI categories and subcategories.

(a) CUI categories and subcategories are the exclusive means of designating CUI throughout the executive branch. They identify unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable laws, regulations, and Government-wide policies. Agencies may not control any unclassified information outside of the CUI Program.

(b) Agencies must designate CUI only by use of a category or subcategory approved by the CUI Executive Agent and published in the CUI Registry.

§ 2002.12 Safeguarding.

(a) *General safeguarding policy.* (1) Agencies must safeguard CUI at all times in a manner that minimizes the risk of unauthorized disclosure while allowing for access by authorized holders.

(2) Agency personnel must comply with policy in the Order, this part, and the CUI Registry, and review their agency's CUI policies for additional instructions. For categories designated as CUI Specified, employees must also follow the procedures in the underlying laws, regulations, or Government-wide policies that established the specific category or subcategory involved.

(3) Safeguarding measures that are authorized or accredited for classified information are also sufficient for safeguarding CUI.

(4) Pursuant to the Order and this part, and in consultation with affected agencies, the CUI Executive Agent issues safeguarding standards in the CUI Registry, and updates them as needed.

(b) *CUI safeguarding standards.* Agencies must safeguard CUI using one of two types of standards:

(1) *CUI Basic.* CUI Basic is the default set of standards agencies must apply to all CUI unless the CUI Registry annotates the relevant information as CUI Specified.

(2) *CUI Specified.* (i) Agencies safeguard CUI using CUI Specified standards only when the involved information falls into a category or subcategory designated in the CUI Registry as CUI Specified. In such cases, agencies should apply the specified set of standards required by the underlying authorities, as indicated in the CUI Registry.

(ii) When the authorizing laws, regulations, or Government-wide policies for a specific CUI Specified category or subcategory is silent on a safeguarding or disseminating requirement, agencies must handle that requirement using the CUI Basic standards, unless this results in any treatment that is inconsistent with the CUI Specified authority. If such a conflict occurs, agencies follow the CUI Specified authority's requirements.

(c) *Protecting CUI under the control of an authorized holder.* (1) Authorized holders must have access to controlled environments in which to protect CUI from unauthorized access or observation.

(2) When discussing CUI, you must reasonably ensure that unauthorized individuals cannot overhear the conversation.

(3) When outside a controlled environment, you must keep the CUI under your direct control or protect it with at least one physical barrier. You or the physical barrier must reasonably protect the CUI from unauthorized access or observation.

(4) Agencies must protect the confidentiality of CUI that is processed, stored, or transmitted on Federal information systems consistently with the security requirements and controls established in FIPS Publication 199, FIPS Publication 200, and NIST SP 800–53.

(d) *Protecting CUI not under control of an authorized holder.* (1) You may use the United States Postal Service or any commercial delivery service when you need to transport or deliver CUI to another organization.

(2) We encourage you to use in-transit automated tracking and accountability tools when you send CUI.

(3) You may use interoffice or interagency mail systems to transport CUI.

(4) Mark packages that contain CUI to indicate that they are intended for the

recipient only and should not be forwarded.

(5) Do not put CUI markings on the outside of an envelope or package.

(e) *Reproducing CUI.* (1) You may reproduce (*e.g.,* copy, scan, print, electronically duplicate) CUI in furtherance of a lawful Government purpose.

(2) When reproducing CUI documents on equipment such as printers, copiers, scanners, or fax machines, you must ensure that the equipment does not retain data or you must otherwise sanitize it in accordance with NIST SP 800–53.

(f) *Destroying CUI.* (1) You may destroy CUI when:

(i) Your agency no longer needs the information; and

(ii) Records disposition schedules published or approved by NARA or other applicable laws, regulations, or Government-wide policies no longer require your agency to retain the records.

(2) When destroying CUI, including in electronic form, you must do so in a manner that makes it unreadable, indecipherable, and irrecoverable, using any of the following:

(i) Guidance for destruction in NIST SP 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, and NIST SP 800–88, Guidelines for Media Sanitization;

(ii) Any method of destruction approved for Classified National Security Information, as delineated in 32 CFR 2001.47, Destruction, or any implementing or successor guidance; or

(iii) Any specific destruction methods required by laws, regulations, or Government-wide policies for that item.

(g) Information systems that process, store, or transmit CUI.

(1) Agencies must apply information system requirements to CUI that are consistent with already-required NIST standards and guidelines and OMB policies. The Federal Information Security Modernization Act (FISMA) of 2014, 44 U.S.C. 3541, *et seq.,* requires all Federal agencies to apply the standards in FIPS Publication 199 and FIPS Publication 200. FIPS Publication 200 and OMB Memorandum-14–04, November 18, 2013, require all Federal agencies to also apply the appropriate security requirements and controls from NIST SP 800–53. All three sets of publications are free and available from the NIST Web site at *http://www.nist.gov/publication-portal.cfm.*

(2) Consistent with this already-established framework governing all Federal information systems, CUI is categorized at the moderate confidentiality impact level in accordance with FIPS Publication 199. Likewise, agencies must also apply the appropriate security requirements and controls from FIPS Publication 200 and NIST SP 800–53 consistently with any risk-based tailoring decisions. Agencies may increase the confidentiality impact level above moderate and apply additional security requirements and controls only internally; they may not require anyone outside the agency to use a higher impact level or more stringent security requirements and controls.

§ 2002.13 Accessing and disseminating.

(a) *General policy.* (1) Agencies should disseminate and permit access to CUI, provided such access or dissemination:

(i) Abides by the laws, regulations, or Government-wide policies that established the CUI category or subcategory;

(ii) Furthers a lawful Government purpose;

(iii) Is not restricted by an authorized limited dissemination control established by the CUI Executive Agent; and,

(iv) Is not otherwise prohibited by law.

(2) Agencies should impose controls only as necessary to abide by restrictions on access to CUI. Agencies may not impose controls that unlawfully or improperly restrict access to CUI.

(3) Prior to disseminating CUI, you must mark CUI according to marking guidance issued by the CUI Executive Agent.

(4) Non-executive branch entities may receive CUI directly from members of the executive branch or as sub-recipients from other non-executive branch entities.

(5) In order to disseminate CUI to a non-executive branch entity, you must have a reasonable expectation that the recipient will continue to control the information in accordance with the Order, this part, and the CUI Registry.

(6) When feasible, agencies should enter into a written agreement with any intended non-executive branch entity. At a minimum, such agreements must specify that:

(i) CUI remains under the legal control of the Federal Government and its misuse is subject to penalties permitted under applicable laws, regulations, or Government-wide policies;

(ii) Non-executive branch entities must handle CUI consistently with the Order, this part, and the CUI Registry; and

(iii) The non-executive branch entity must report any non-compliance with handling requirements to the disseminating agency's CUI senior agency official. When the disseminating agency is not the designating agency, the disseminating agency must notify the designating agency.

(b) *Controls on accessing and disseminating CUI*—(1) *CUI Basic.* You should disseminate and encourage access to CUI Basic for any recipient when it meets the requirements set out in paragraph (a)(1) of this section.

(2) *CUI Specified.* You may disseminate and allow access to CUI Specified as permitted by the authorizing laws, regulations, or Government-wide policies that established that category or subcategory of CUI Specified.

(i) The CUI Registry annotates CUI categories and subcategories that contain Specified controls.

(ii) In the absence of specific dissemination restrictions, agencies may disseminate and allow access to the CUI as they would for CUI Basic.

(3) *Limited dissemination.* (i) You may place limits on disseminating CUI only through the use of limited dissemination controls approved by the CUI Executive Agent and published in the CUI Registry.

(ii) Use of limited dissemination controls to unnecessarily restrict access to CUI is contrary to the stated goals of the CUI Program. You may therefore use these controls only when it serves a lawful Government purpose, or you are required by laws, regulations, or Government-wide policies to do so.

(iii) You may apply limited dissemination controls to any CUI that is required or permitted to have restricted access by or to certain entities.

(iv) You may combine the approved limited dissemination controls listed in the CUI Registry to accommodate necessary practices.

(c) *Methods of disseminating CUI.* (1) Before disseminating CUI, you must reasonably expect that all intended recipients are authorized to receive the CUI. You may then disseminate the CUI by any method that meets the safeguarding requirements of this part and ensures receipt in a timely fashion, unless the laws, regulations, or Government-wide policies that govern that category or subcategory of CUI requires otherwise.

(2) To disseminate CUI using systems or components that are subject to NIST guidelines and publications (*e.g.,* email applications, text messaging, facsimile, or voicemail), you must do so consistently with the moderate confidentiality value set out in the

FISMA-mandated FIPS Publication 199, FIPS Publication 200, and NIST SP 800–53.

§ 2002.14 Decontrolling.

(a) Agencies may decontrol CUI that they have designated:

(1) When laws, regulations or Government-wide policies no longer require its control as CUI;

(2) In response to a request by an authorized holder to decontrol it, if the agency is the designating agency;

(3) When the designating agency decides to release it to the public by making an affirmative, proactive disclosure;

(4) When the agency releases it in accordance with an applicable information access statute, such as the Freedom of Information Act (FOIA);

(5) Consistent with any declassification action under Executive Order 13526 or any predecessor or successor order; or

(6) When a pre-determined event or date occurs, as described in the decontrol indicators section of this part.

(b) Decontrolling may occur automatically upon the occurrence of one of the conditions in paragraph (a) of this section, or through an affirmative decision by the designating agency.

(c) Only personnel that an agency authorizes may decontrol CUI.

(d) Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI Program, but does not constitute authorization for public release.

(e) Agencies should decontrol any CUI designated by their agency that no longer requires CUI controls as soon as practicable.

(f) You must remove or strike through with a single straight line all CUI markings when restating, paraphrasing, re-using, releasing to the public, or donating CUI to a private institution. Otherwise, you are not required to mark, review, or take other actions to indicate the CUI is no longer controlled.

(1) Agencies may establish policy that allows holders to remove or strike through only those markings on the first or cover page of the CUI.

(2) If you use the decontrolled CUI in a newly created document, you must remove all CUI markings for the decontrolled information.

(g) Once decontrolled, any public release of information that was formerly CUI must be in accordance with existing agency policies on the public release of information.

(h) You may request that the designating agency decontrol certain CUI. Agency heads or the CUI senior agency official must establish processes for handling CUI decontrol requests submitted by authorized holders.

(i) If an authorized holder publicly releases CUI in accordance with the designating agency's authorized procedures, the release constitutes decontrol of the information.

(j) Unauthorized disclosure of CUI does not constitute decontrol.

(k) You must not decontrol CUI in an attempt to conceal, circumvent, or mitigate an identified unauthorized disclosure.

(l) When laws, regulations, and Government-wide policies require specific decontrol procedures, you must follow such requirements.

(m) The Archivist of the United States may decontrol records transferred to the National Archives in accordance with § 2002.26 of this part, absent a specific agreement otherwise with the originating agency. The Archivist decontrols records to facilitate public access pursuant to 44 U.S.C. 2108 and NARA's regulations at 36 CFR parts 1235, 1250, and 1256.

§ 2002.15 Marking.

(a) *General marking policy.* (1) CUI markings listed in the CUI Registry are the only control markings authorized to designate unclassified information requiring safeguarding or dissemination controls. You must mark CUI exclusively in accordance with this part and the CUI Registry.

(2) You must uniformly and conspicuously apply CUI markings to all CUI prior to disseminating it unless otherwise specifically permitted by the CUI Executive Agent or as provided below.

(3) The CUI Program prohibits using markings or practices not included in this part or the CUI Registry. Agencies must take active measures to discontinue use of any other markings, in accordance with guidance from the CUI Executive Agent. Agencies may not modify CUI Program markings or deviate from the method of use prescribed by the CUI Executive Agent in an effort to accommodate existing agency marking practices, except in extraordinary circumstances approved by the CUI Executive Agent.

(4) The designating agency determines that the information qualifies for CUI status and applies the appropriate CUI marking at the time of designation.

(5) You must not mark information as CUI to conceal illegality, negligence, ineptitude, or other disreputable circumstances embarrassing to any person, any agency, the Federal Government, or any partners thereof.

(6) The CUI Program does not require agencies to redact or re-mark documents that bear legacy markings. However, agencies must mark as CUI any information they derive from such documents and re-use in a new document, if the information qualifies as CUI.

(7) When marking is excessively burdensome, an agency's CUI senior agency official may approve waivers of all or some of the marking requirements for CUI designated within that agency. However, all CUI must be marked when disseminated outside of that agency.

(i) When CUI senior agency officials grant such waivers, they must still ensure that the agency appropriately safeguards and disseminates the CUI.

(ii) The CUI senior agency official must detail in each waiver the alternate protection methods the agency must employ to ensure protection of the CUI in question.

(iii) All such waivers apply to CUI only while in possession of employees of that agency.

(8) The lack of a CUI marking on information does not exempt the information from applicable handling requirements set forth in laws, regulations, or Government-wide policies.

(b) *The CUI banner marking.* You must mark all CUI with a CUI banner marking, which may include up to three elements:

(1) *The CUI control marking (mandatory).* (i) The CUI control marking may consist of *either* the word ''CONTROLLED'' or the acronym ''CUI'' (at the designator's discretion). You may not use alternative markings to identify or mark items as CUI.

(ii) If you include in the banner marking other authorized CUI markings in addition to the CUI control marking (as set out below), separate those elements from the CUI control marking by a single slash (''/'').

(2) *CUI category and subcategory markings (mandatory for CUI Specified).* (i) The CUI Registry lists the category and subcategory markings, which align with the CUI's designated category or subcategory.

(ii) The CUI senior agency official may approve optional use of CUI category and subcategory markings for CUI Basic, through agency policy. The policy may also address whether to include these markings in the CUI banner marking. When the CUI senior agency official has approved CUI Basic category or subcategory markings through agency policy, you may include those markings in the CUI banner marking when multiple categories or subcategories are present.

(iii) You must use CUI category and subcategory markings for CUI Specified.

If laws, regulations, or Government-wide policies require specific marking, disseminating, informing, or warning statements, you must use those indicators as required by those authorities. However, you must not include these additional indicators in the CUI banner marking or portion markings.

(iv) Include in the CUI banner marking all CUI Specified category or subcategory markings; other category or subcategory markings that may apply are optional.

(v) List category or subcategory markings in alphabetical order, using the approved abbreviations listed in the CUI Registry, and separate multiple categories or subcategories from each other by a single slash (''/'').

(3) *Limited dissemination control markings.* (i) CUI limited dissemination control markings align with limited dissemination controls established under § 2002.13(b)(3) of this part.

(ii) Designating agencies must establish agency policy that includes specific criteria for when, and by whom, they will allow the use of limited dissemination controls and control markings, and ensure the policy aligns with the requirements in § 2002.13(b)(3) of this part.

(iii) In accordance with its policy, the designating agency may apply limited dissemination control markings when it designates information as CUI and may approve later requests by authorized holders to apply them. Authorized holders may apply limited dissemination control markings only with the approval of the designating agency.

(iv) When including limited dissemination control markings in the CUI banner marking, use a double slash (''//'') to separate them from the previous element of the CUI banner marking (*e.g.* ''CUI//NOFORN'' or ''CONTROLLED/LEI//NOFORN'').

(v) List limited dissemination control markings in alphabetical order, using the approved abbreviations listed in the CUI Registry, and separate them from each other by a single slash (''/'').

(c) *Using the CUI banner marking.* (1) The content of the CUI banner marking must apply to the whole document (*e.g.,* inclusive of all CUI within the document) and must be the same on every page on which you use it.

(2) The CUI banner marking must appear, at a minimum, at the top center of each page containing CUI.

(3) For non-document formats, the container or portion of the item that is first visible must carry the banner.

(d) *CUI designation indicator (mandatory).* (1) All media containing CUI must carry an indicator of who designated the CUI within it. This should include:

(i) The designator's agency (at a minimum); and

(ii) If not otherwise evident, the designating agency or office via a ''Controlled by'' line. For example, ''Controlled by: Division 5, Department of Good Works.''

(2) The designation indicator must be readily apparent to authorized holders and may appear only on the first page or cover.

(e) *CUI decontrolling indicators.* (1) Where feasible, designating agencies must include a specific decontrolling date or event with all media containing CUI. This may be accomplished in any manner that makes the decontrolling schedule readily apparent to an authorized holder.

(2) When used, decontrolling indicators must use the format: ''Decontrol On:'' followed by a date or name of a specific event.

(3) If using a specific decontrolling date, list it in the format ''YYYYMMDD.''

(i) Decontrol is presumed at midnight local time on the date indicated.

(ii) Authorized holders may consider specific items of CUI as decontrolled as of the date indicated, requiring no further review by, or communication with, the designator.

(4) If using a specific event after which the CUI is considered decontrolled:

(i) The event must be foreseeable and verifiable by any authorized holder (*e.g.,* not based on or requiring special access or knowledge);

(ii) State the event title in bullet format rather than a narrative statement; and

(iii) Include point of contact and preferred method of contact information in the decontrol indicator when using this method, to allow authorized holders to verify that a specified event has occurred.

(f) *Portion marking CUI.* (1) Agencies are permitted and encouraged to portion mark all CUI, to facilitate information sharing and proper handling.

(2) You may mark CUI only with portion markings approved by the CUI Executive Agent and listed in the CUI Registry.

(3) CUI portion markings consist of the following elements:

(i) The CUI control marking, which must be the acronym ''CUI'';

(ii) CUI category/subcategory portion markings (if required); and

(iii) CUI limited dissemination control portion markings (if required).

(4) When using portion markings:

(i) You must indicate CUI portions by placing the required portion marking for each portion inside parentheses, immediately before the portion to which it applies (*e.g.* ''(CUI)'' or ''(CUI/LEI//NF).''

(ii) CUI category and subcategory markings are optional for CUI Basic. Agencies should manage their use by means of agency policy.

(iii) You must portion mark both CUI and uncontrolled unclassified portions. Indicate the uncontrolled unclassified portions by using a ''(U)'' immediately preceding the portion to which it applies.

(5) In cases where portions consist of several segments, such as paragraphs, sub-paragraphs, bullets, and sub-bullets, and the control level is the same throughout, you may place a single portion marking at the beginning of the primary paragraph or bullet. However, if the portion includes different CUI categories or subcategories, you must portion mark all segments separately to avoid improper control of any one segment.

(6) Each portion must reflect the control level of that individual portion and not any other portions. If the information contained in a sub-paragraph or sub-bullet is a different CUI category or subcategory from its parent paragraph or parent bullet, this does not make the parent paragraph or parent bullet controlled at that same level.

(g) *Commingling CUI markings with classified information.* (1) When you include CUI in documents that also contain classified information, you must make the following changes to the CUI marking scheme:

(i) Portion mark all CUI to ensure that CUI portions can be distinguished from portions containing classified and uncontrolled unclassified information;

(ii) Include CUI Specified category and subcategory markings in the overall banner marking;

(iii) Include the CUI control marking (''CUI'') in the overall marking banner directly before the CUI category and subcategory markings (*e.g.,* ''CUI/SP–PCII''). This applies only when CUI category and subcategory markings are included in the banner;

(iv) Separate category and subcategory markings from each other by a single slash (*e.g.* ''CUI/SP–PCII/SP–UCNI'');

(v) Include all CUI limited dissemination controls with each CUI portion and in the CUI section of the overall classified marking banner, if applicable. Separate limited dissemination markings from each other by a single slash (''/''); and

(vi) Separate the entire CUI marking string for the CUI banner marking from other parts of the overall classified marking banner by using a double slash (''//'') on either end. However, if the CUI marking string is the final portion of the overall classified marking banner, do not use an ending double slash (''//'').

(2) *Commingling restricted data (RD) and formerly restricted data (FRD) with CUI.* (i) To the extent possible, avoid commingling RD or FRD with CUI in the same document. When it is not practicable to avoid such commingling, follow the marking requirements in the Order, this part, and the CUI Registry, as well as the marking requirements in 10 CFR part 1045, Nuclear Classification and Declassification.

(ii) The decontrolling provisions of the Order do not apply to portions marked as containing RD or FRD.

(iii) Add ''Not Applicable (or N/A) to RD/FRD portions'' to the ''Decontrol On'' line for commingled documents.

(iv) Follow the requirements of 10 CFR part 1045 when extracting an RD or FRD portion for use in a new document.

(v) Follow the requirements of the Order, this part, and the CUI Registry if extracting a CUI portion for use in a new document.

(vi) The lack of declassification instructions for RD or FRD portions does not eliminate the requirement to process commingled documents for declassification in accordance with the Atomic Energy Act, or 10 CFR part 1045.

(h) *Transmittal document marking requirements.* (1) When a transmittal document accompanies CUI, the transmittal document must include a CUI marking on its face (''CONTROLLED'' or ''CUI''), indicating that CUI is attached or enclosed.

(2) The transmittal document must also include conspicuously on its face the following or similar instructions, as appropriate:

(i) ''Upon Removal of Enclosure, This Document is Uncontrolled Unclassified Information''; or

(ii) ''Upon Removal of Enclosure, This Document is (Control Level).''

(i) *Working papers.* Mark working papers containing CUI as required for any CUI contained within them and handle them in accordance with this part and the CUI Registry.

(j) *Using supplemental administrative markings with CUI.* (1) Agency heads may authorize the use of supplemental administrative markings (*e.g.* ''Pre-decisional,'' ''Deliberative,'' ''Draft'') for use with CUI.

(2) Agency heads may not authorize the use of supplemental administrative markings to establish safeguarding requirements or disseminating restrictions, or to designate the information as CUI.

(3) To be eligible for use with CUI, agencies must detail use and requirements for supplemental administrative markings in agency policy that is available to anyone who may come into possession of CUI carrying these markings.

(4) Do not incorporate or include supplemental administrative markings in the CUI markings.

(5) Supplemental administrative markings must not duplicate any CUI marking described in this part and the CUI Registry.

(k) *Unmarked CUI.* Treat unmarked information that qualifies as CUI as described in the Order, this part, and the CUI Registry.

§ 2002.16 Waivers of CUI requirements in exigent circumstances.

(a) In exigent circumstances, the agency head or the CUI senior agency official may waive the requirements established in this part or the CUI Registry for any CUI within the agency's possession or control, unless specifically prohibited by applicable laws, regulations, or Government-wide policies.

(b) When the circumstances requiring the waiver end, the agency must reinstitute the requirements for all CUI covered by the waiver.

§ 2002.17 Limitations on applicability of agency CUI policies.

(a) Agency policies pertaining to CUI do not apply to entities outside that agency unless the CUI Executive Agent approves their application and publishes them in the CUI Registry.

(b) Agencies may not include any requirements on handling CUI other than those contained in the Order, this part, or the CUI Registry when entering into contracts, treaties, or other agreements with entities outside of that agency.

Subpart C—CUI Program Management

§ 2002.20 Education and training.

(a) The agency head or CUI senior agency official must establish policies that address the means, methods, and frequency of agency CUI training.

(b) At a minimum, agencies must ensure that personnel who have access to CUI receive training on creating CUI, relevant CUI categories and subcategories, the CUI Registry, associated markings, and applicable safeguarding, disseminating, and decontrolling policies and procedures. Agencies must ensure that it trains employees on these matters when the employees first begin working for the agency and at least once every two years thereafter, at a minimum.

(c) The CUI Executive Agent may review agency training materials to ensure consistency and compliance with the Order, this part, and the CUI Registry.

§ 2002.21 Agency self-inspection program.

(a) Agency heads must establish and maintain a self-inspection program to ensure compliance with the principles and requirements of the Order, this part, and the CUI Registry.

(b) The self-inspection program must include no less than annual periodic review and assessment of the agency's CUI program. The agency head or CUI senior agency official should determine frequency based on program needs and the degree of designation activity.

(c) The self-inspection program must include:

(1) Self-inspection methods, reviews, and assessments that serve to evaluate program effectiveness, measure the level of compliance, and monitor the progress of CUI implementation;

(2) Formats for documenting self-inspections and recording findings, when not prescribed by the CUI Executive Agent;

(3) Procedures by which to integrate lessons learned and best practices arising from reviews and assessments into operational policies, procedures, and training;

(4) A process for resolving deficiencies and taking corrective actions in an accountable manner; and

(5) Analysis and conclusions from the self-inspection program, documented on an annual basis and as requested by the CUI Executive Agent.

§ 2002.22 Challenges to designation of information as CUI.

(a) Authorized holders of CUI who, in good faith, believe that its designation as CUI is improper or incorrect should notify the designating agency of this belief.

(b) Agency CUI senior agency officials must create a process within their agency to accept and manage challenges to CUI status. At a minimum, this process must include a timely response to the challenger that:

(1) Acknowledges receipt of the challenge;

(2) States an expected timetable for response to the challenger;

(3) Provides an opportunity for the challenger to define their rationale for belief that the CUI in question is inappropriately designated;

(4) Gives contact information for the official making the agency's decision in this matter; and

(5) Ensures that challengers are not subject to retribution for bringing such challenges.

(c) Until the challenge is resolved, continue to safeguard and disseminate the challenged CUI at the control level indicated in the markings.

(d) If a challenging party disagrees with the response to their challenge, that party may use the Dispute Resolution procedures described in § 2002.23 of this part.

§ 2002.23 Dispute resolution.

(a) All parties to a dispute arising from implementation or interpretation of the Order, this part, or the CUI Registry should make every effort to resolve the dispute expeditiously. Disputes should be resolved within a reasonable, mutually acceptable time period, taking into consideration the mission, sharing, and protection requirements of the parties concerned.

(b) If parties to a dispute cannot reach a mutually acceptable resolution, either party may refer the matter to the CUI Executive Agent.

(c) The CUI Executive Agent is the impartial arbiter of the dispute and has the authority to render a decision on the dispute after consultation with all affected parties, unless laws, regulations, or Government-wide policies otherwise specifically govern requirements for the involved category or subcategory of information. If a party to the dispute is also a member of the Intelligence Community, the CUI Executive Agent must consult with the Office of the Director of National Intelligence beginning when the CUI Executive Agent receives the dispute for resolution.

(d) Until the dispute is resolved, continue to safeguard and disseminate any disputed CUI at the control level indicated in the markings.

(e) Per section 4(e) of the Order, parties may appeal the CUI Executive Agent's decision through the Director of OMB to the President for resolution.

§ 2002.24 Misuse of CUI.

(a) CUI senior agency officials establish agency processes and criteria for reporting and investigating misuse of CUI.

(b) The CUI Executive Agent reports findings on any incident involving misuse of CUI to the offending agency's CUI senior agency official or CUI Program manager for action, as appropriate.

§ 2002.25 Sanctions for misuse of CUI.

(a) To the extent that agency heads are otherwise authorized to take administrative action against agency personnel who misuse CUI, agency CUI policy governing misuse should reflect that authority.

(b) Where laws, regulations, or Government-wide policies governing certain categories or subcategories of CUI specifically establishes sanctions, agencies must adhere to such sanctions.

§ 2002.26 Transferring records.

(a) When feasible, agencies must decontrol records containing CUI prior to transferring them to NARA.

(b) When an agency cannot decontrol records before transferring them to NARA, the agency must:

(1) Indicate on a Transfer Request (TR) in NARA's Electronic Records Archives (ERA) or on an SF 258 paper transfer form, that the records should continue to be controlled as CUI (subject to NARA's regulations on transfer, public availability, and access; see 36 CFR parts 1235, 1250, and 1256); and

(2) For hard copy transfer, place the appropriate CUI marking on the outside of the container to indicate that it contains information designated as CUI.

(c) If the agency does not indicate the CUI status on both the container and the TR or SF 258, NARA may assume the information was decontrolled prior to transfer, regardless of any CUI markings on the actual records.

§ 2002.27 CUI and the Freedom of Information Act (FOIA).

(a) The mere fact that information is designated as CUI has no bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion.

(b) Accordingly, agencies must ensure that:

(1) They do not cite the FOIA as a CUI safeguarding or disseminating control authority for CUI; and

(2) Agency FOIA reviewers use FOIA release standards and exemptions to determine whether or not to release records in response to a FOIA request; they do not use CUI markings and designations as a dispositive factor in making a FOIA disclosure determination.

§ 2002.28 CUI and the Privacy Act.

The fact that records are subject to the Privacy Act of 1974 does not mean that agencies must mark them as CUI. Consult agency guidance to determine which records may be subject to the Privacy Act. However, information contained in Privacy Act systems of records may be subject to controls under other CUI categories or subcategories and the agency may need to mark that information as CUI for that reason.

Dated: April 27, 2015.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2015–10260 Filed 5–7–15; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0315]

RIN 1625–AA00

Safety Zone for Fireworks Display, Patapsco River, Inner Harbor; Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of the Patapsco River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located within the Inner Harbor at Baltimore, MD, on July 2, 2015. This safety zone is intended to protect the maritime public in a portion of the Patapsco River.

DATES: Comments and related material must be received by the Coast Guard on or before May 15, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on

viewing or submitting material to the docket, call Cheryl Collins, 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. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2015–0315] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0315) 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.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This rule involves a fireworks display associated with an event that will take place in Baltimore, MD, on July 2, 2015. The launch site for the fireworks display is from a discharge barge located in the Patapsco River. The permanent safety zones listed in the Table to 33 CFR 165.506 do not apply to this event.

C. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 33 CFR 1.05–1 and 160.5; and Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones. Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

D. Discussion of Proposed Rule

Under Armour will sponsor a fireworks display launched from a barge located in the Inner Harbor in Baltimore, MD, scheduled on July 2, 2015 at approximately 9:30 p.m.

Through this regulation, the Coast Guard proposes to establish a temporary safety zone. The proposed zone will encompass all waters of the Patapsco River, within a 300 yards radius of a fireworks discharge barge in approximate position latitude 39°16′56″ N, longitude 076°36′19″ W, located in the Inner Harbor at Baltimore, Maryland, MD. The temporary safety zone will be enforced from 8:30 p.m. through 10:30 p.m. on July 2, 2015.

The effect of this temporary safety zone will be to restrict navigation in the regulated area immediately before, during, and immediately after the fireworks display. Vessels will be allowed to transit the waters of the Patapsco River outside the safety zone.

This rule requires that entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed 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.

Although this regulation would restrict access to this area, the effect of this proposed rule will not be significant because: (i) The safety zone will only be in effect from 8:30 p.m. through 10:30 p.m. on July 2, 2015, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to certain portions of the Inner Harbor, smaller vessel traffic will be able to transit safely around the safety zone.

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 proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or transit through or within, or anchor in, the safety zone during the enforcement period. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

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

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

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

12. Energy Effects

This proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may negatively impact the safety or other interests of waterway users and near shore activities in the event area. The activity includes fireworks launched

from barges near the shoreline that generally rely on the use of navigable waters as a safety buffer to protect the public from fireworks fallouts and premature detonations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0315 to read as follows:

§ 165.T05–0315 Safety Zone for Fireworks Display, Patapsco River, Inner Harbor; Baltimore, MD.

(a) *Location.* The following area is a safety zone: All waters of the Patapsco River, within a 300 yards radius of a fireworks discharge barge in approximate position latitude 39°16′56″ N, longitude 076°36′19″ W, located in the Inner Harbor at Baltimore, Maryland. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed as directed while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. through 10:30 p.m. on July 2, 2015.

Dated: April 28, 2015.

Kevin C. Kiefer,

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

[FR Doc. 2015–11190 Filed 5–7–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0188]

RIN 1625–AA00

Safety Zones; Misery Challenge, Manchester Bay, Manchester, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone in Manchester Bay to be enforced during the Misery Challenge marine event, which will involve swimmers, kayakers, and stand-up paddlers. This safety zone would ensure the protection of the event participants, support vessels, and maritime public from the hazards associated with the event. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Coast Guard Sector Boston Captain of the Port (COTP) or the COTP's designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 8, 2015. Requests for public meetings must be received by the Coast Guard on or before May 15, 2015.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
CFR Code of Federal Regulation
FR Federal Register
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum of 1983

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2015–0188 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2015–0188 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.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulartory History and Information

This is a first time event with no regulatory history.

C. Basis and Purpose

The legal basis for the proposed rule is *33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6,* and *160.5;* Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish regulatory safety zones.

By establishing a temporary safety zone, the Coast Guard will ensure the protection of the event participants, support vessels, and maritime public from the hazards associated with the event.

D. Discussion of Proposed Rule

For the reason discussed above, the COTP, Sector Boston, is proposing to establish a temporary safety zone in the navigable waters of Manchester Bay, Manchester, Massachusetts. This rule is necessary to ensure the protection of the event participants, support vessels, and maritime public from the hazards associated with the event. Vessels not associated with the event shall maintain a distance of at least 100 yards from the participants. Specific geographic locations are specified in the regulatory text. This rule will be effective on August 1, 2015, from 7:30 a.m. to 11:30 a.m.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed 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 expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, this safety zone will be in effect for only 4 hours in the morning when vessel traffic is expected to be light. Second, vessels may enter or pass through the safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide notification to the public through Broadcast Notice to Mariners well in advance of the event.

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 proposed rule will not have a significant economic impact on a substantial number of small entities.

For all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

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

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

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

12. Energy Effects

This proposed rule 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this assessment is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T01–0188 to read as follows:

§ 165.T01–0188 Safety Zone—Misery Challenge—Manchester Bay, Manchester, Massachusetts.

(a) *General.* Establish a temporary safety zone:

(1) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, within (100) yards from the participants and vessels in support of events in Manchester Bay, Manchester, MA, and enclosed by a line connecting the following points (NAD 83):

Latitude	Longitude
42°34′03″ N ...	70°46′42″ W; thence to
42°33′58″ N ...	70°46′33″ W; thence to
42°32′32″ N ...	70°47′45″ W; thence to
42°32′58″ N ...	70°48′40″ W; thence to point of origin.

(2) *Effective and enforcement period.* This rule will be effective on August 1, 2015, from 7:30 a.m. to 11:30 a.m.

(b) *Regulations.* While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP), Sector Boston the COTP's representatives. However, any vessel that is granted permission by the COTP or the COTP's representatives must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel

within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center).

(c) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 1226.

(d) *Notification.* Coast Guard Sector Boston will give notice through the Local Notice to Mariners, Broadcast Notice to Mariners, and to mariners for the purpose of enforcement of this temporary safety zone. Also, Sector Boston will notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(e) *COTP representative.* The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: April 27, 2015.

J.C. O'Connor III,

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

[FR Doc. 2015–11189 Filed 5–7–15; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2015–8; Order No. 2465]

Rules for Automatic Closure of Inactive Dockets

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing a rule which establishes procedures related to the automatic closure of inactive dockets. The primary purpose of the proposed rule is to simplify the docket closure process and reduce uncertainty over the status of inactive dockets. The Commission invites public comment on the proposal.

DATES: *Comments are due:* June 8, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
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I. Introduction

The Commission establishes a rulemaking docket pursuant to the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), which authorizes the Commission to develop rules and establish procedures that it deems necessary and proper to carry out Commission functions.[1]

The primary purpose of this rulemaking is to establish procedures that would simplify the docket closure process by permitting automatic closure of a docket where there has been no activity in the docket for at least 12 months. The proposed rule would ensure that the information provided to the public concerning active dockets remains current. The proposed rule promotes sound and efficient administrative practice, and would serve the public interest by reducing uncertainty over the status of inactive dockets.

II. Background

Currently, there are no regulations in place that allow for the automatic closure of an inactive docket. In recent years, the Commission has initiated closure of inactive dockets by issuing an order to that effect. For example, on January 29, 2015, the Commission issued an order closing Docket No. PI2012–1 after nearly two years of inactivity.[2] On January 30, 2015, the Commission issued an order closing Docket No. PI2010–1 as there had been no activity in the docket since June 2011.[3] Certain other long-standing dockets, such as the ones noted above, remain open and are identified on the Commission's Web site as active dockets, despite years of inactivity. The proposed rule would establish a maximum inactive period that would automatically initiate docket closure, without Commission action, thereby preventing dormant dockets from remaining open without productive activity. It would also establish an opportunity for interested persons to request the reopening of an automatically closed docket for good cause.

III. Proposed Rules

Proposed § 3001.44(a) sets an inactive period of 12 months as the triggering event for automatic docket closure. Proposed § 3001.44(b) provides interested persons with an opportunity to request that an inactive docket remain open at least 10 days prior to automatic closure. Proposed § 3001.44(c) provides interested persons with an opportunity to request that an automatically closed docket be reopened for good cause.

IV. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rules. Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Anne C. O'Connor is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2015–8 is established for the purpose of receiving comments on the proposed changes to part 3001, as discussed in this Order.

2. Interested persons may submit comments no later than 30 days from the date of publication of this notice in the **Federal Register**.

3. Pursuant to 39 U.S.C. 505, Anne C. O'Connor is appointed to serve as Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

Concurring Opinion of Commissioner Goldway

I believe due process and transparency in public proceedings obliges a notice to the public when a

[1] See 39 U.S.C. 503; see also Postal Reorganization Act, Public Law 91–375, 84 Stat. 759 (1970), at section 3603.

[2] Docket No. PI2012–1, Order No. 2335, Order Closing Docket, January 29, 2015.

[3] Docket No. PI2010–1, Order No. 2337, Order Closing Proceeding, January 30, 2015, at 2.

docket is closed. Lacking such notice, it will be more difficult for interested persons to determine when, how and for what reason a docket was terminated.

I would add the following language to the Proposed Rule: The Commission shall issue a public notice announcing the automatic closure of the docket, at the time of closure.

The rule would be improved and the Commission's commitment to openness and citizen participation would be enhanced if the Commission were to adopt in the Final Rule the additional step I had recommended.

Ruth Y. Goldway

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. Add new § 3001.44 to read as follows:

§ 3001.44 Automatic Closure of Inactive Docket.

(a) The Commission shall automatically close a docket in which there has been no activity of record by any interested party or participant for 12 consecutive months.

(b) *Motion to stay automatic closure.* Any interested party or participant, including the Postal Service, a Public Representative, or the Commission, may file a motion to stay automatic closure, pursuant to § 3001.21, and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 10 days prior to the automatic closure date.

(c) *Motion to reopen automatically closed docket.* If, at any time after a docket has been automatically closed, any interested party or participant, including the Postal Service, a Public Representative, or the Commission, may file a motion to reopen an automatically closed docket, pursuant to § 3001.21, and must set forth with particularity good cause for reopening the docket.

[FR Doc. 2015–11061 Filed 5–7–15; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[EPA–HQ–OPPT–2010–0572; FRL–9926–86]

Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is holding a public meeting during the comment period of the proposed rule that published in the **Federal Register** of April 6, 2015, which involved proposed reporting and recordkeeping requirements for certain chemical substances when they are manufactured or processed at the nanoscale. Specifically, that proposal involves one-time reporting for existing nanoscale materials and one-time reporting for new discrete nanoscale materials before they are manufactured or processed. As stated in that proposed rule, the public meeting will provide an opportunity for further discussion of the proposed requirements and is intended to facilitate comments on all aspects of that proposed rule, especially comments on specific issues as identified in the proposed rule.

DATES: The meeting will be held on June 11, 2015, from 9:00 a.m. to 4:00 p.m. Requests to participate in the meeting must be received on or before June 1, 2015.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the East William Jefferson Clinton Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; email address: *alwood.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the topic of this public meeting?

In the **Federal Register** issue of April 6, 2015 (80 FR 18330; FRL–9920–90), EPA proposed reporting and recordkeeping requirements for certain chemical substances when they are manufactured or processed at the nanoscale. EPA is seeking public comment on all aspects of the proposed rule. In addition, EPA is especially interested in comments pertaining to the following specific issues identified in Unit V. of the proposed rule:

1. Identifying the chemical substances that would be subject to reporting.
2. Distinguishing between nanoscale forms of a reportable chemical substance.
3. Reporting discrete forms at least 135 days before commencement of manufacture or processing.
4. Considerations for the Agency's economic analysis.
5. Electronic reporting.
6. Consideration of potential future rulemaking regarding periodic reporting.

II. How can I request to participate in this meeting?

Requests to participate in this meeting, as well as any requests for accommodation of a disability, should be submitted directly to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information (CBI), and do not submit any comments. Such requests must be received on or before June 1, 2015.

Please remember that your comments must be submitted in accordance with the instructions in the proposed rule; must be identified by docket ID number EPA–HQ–OPPT–2010–0572; and must be received on or before July 6, 2015.

III. How can I access the docket for the Proposed Rule?

The docket for the proposed rule, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0572, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional

information about the docket available at *http://www.epa.gov/dockets.*

Authority: 15 U.S.C. 2607(a).

Dated: May 4, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–11215 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823, 1846, and 1852

RIN 2700–AE17

Drug- and Alcohol-Free Workforce and Mission Critical Systems Personnel Reliability Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA FAR Supplement (NFS) to remove requirements related to the discontinued Space Flight Mission Critical Systems Personnel Reliability Program and to revise requirements related to contractor drug and alcohol testing.

DATES: Interested parties should submit comments to NASA at the address below on or before July 7, 2015 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AE17 via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Marilyn E. Chambers via email at *marilyn.chambers@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA is proposing to revise the NASA FAR Supplement (NFS) to remove policy at 1846.370 NASA contract clauses, and the related clause at 1852.246–70, Mission Critical Space System Personnel Reliability Program. Additionally, other revisions, partially related to the removal of the Mission Critical Space System Personnel Reliability Program, and to clarify and update the guidance, are proposed to Subpart 1823.5, Drug-Free Workplace, and the associated clause at 1852.223–74, Drug- and Alcohol-Free Workforce.

NASA discontinued the Mission Critical Space System Personnel Reliability Program (the Program) effective April 8, 2014. As stated at 79 FR 7391, the Agency conducted an analysis of its existing regulations and determined that 14 CFR part 1214, entitled ''Space Flight Mission Critical Systems Personnel Reliability Program,'' was obsolete and had been replaced by other measures to ensure that contractor employees assigned to mission-critical positions meet established screening requirements. Accordingly, NFS policy implementing the Program is no longer needed. However, the Program was linked to the prescription for the Drug- and Alcohol-Free Workforce clause which directed contracting officers to use the clause in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program.'' With the discontinuance of the Program, the prescription for this clause must be revised.

NASA's authority to require contractor alcohol and drug testing is derived from the Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619. The Act states the success of the United States civil space program is contingent upon the safe and successful development and deployment of the many varied components of that program and that the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs. To this end, NASA is authorized to prescribe regulations which require contractors to conduct preemployment, reasonable suspicion, random, and post-accident testing of contractor employees responsible for safety-sensitive, security, or national security functions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. While the NFS drug and alcohol testing requirements are partially tied to the Mission Critical Space System Personnel Reliability Program, rescission of the program does not remove the need for such testing. Furthermore, 14 CFR, subpart 1214.5, contained two key terms and their definitions that will be helpful to Agency contracting officers in determining which contracts should include the drug and alcohol testing requirements. These terms are ''mission critical space system'' and ''mission critical positions/duties.'' This rule proposes to add these terms to NFS 1823.570, Drug- and Alcohol-free Workplace, and the associated clause at 1852.223–74, Drug- and Alcohol-Free Workforce.

Two other terms, ''employee'' and ''controlled substance,'' are referenced, but not defined at 1823.570–1. These terms are defined at FAR 23.503. Additionally, NFS 1823.570–1 contained the statement, ''The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570–3 and the clause at 1852.223–74.'' This exemption of a controlled substance used in accordance with the terms of a valid prescription, or other uses authorized by law was removed from the definitions and added to paragraph (c)(1) of the clause, so that contractors may easily see when use of a controlled substance may be permitted.

A revised section (b)(2) to the clause adds a reference to NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, Appendices A and B on ''Testing Designated Positions'' (TDPs) for federal employees, as a guide for contractors to use when determining if an employee is in a sensitive position and subject to drug and alcohol testing.

The most recent titles and references for the applicable Federal drug testing programs are added: ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services 73 FR 71858 and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Additionally, the rule expands the list of drugs required to be tested for from ''marijuana and cocaine'' to add amphetamines, opiates and phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR 40.85.

Based on the Civil Space Employee Testing Act requirements, the current clause at 1852.223–74 requires contractors to conduct ''post-accident'' drug and alcohol testing. A new paragraph (5) is added to specify post-accident testing is required when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed $20,000. Additionally, the contractor is advised that the contracting officer may request the results of this post-accident testing. The purpose of this is to inform any accident investigation NASA may conduct. The contractor is required to provide only information on whether the testing was conducted and whether results showed any evidence of drug or

alcohol use in violation of the clause. The contractor is not required to provide the names of individuals tested or of individual employee's test results.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

• This proposed rule amends the NFS to remove requirements related to the Mission Critical Space System Personnel Reliability Program which was discontinued effective April 8, 2014. The NFS contains a clause at 1852.246–70, Mission Critical Space System Personnel Reliability Program, which implemented the requirements of the Program on NASA contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program. With the discontinuance of the Program the clause is no longer necessary and is removed.

• NFS 1823.570–2, Contract clause, requires the contracting officer to insert the clause at 1852.223–74, Drug- and Alcohol-Free Workforce, in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program.'' With the discontinuance of the Program, the prescription for this is revised to remove the reference to the Program. However, because NASA's contractor drug and alcohol testing requirements are based on the statutory requirements of the Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619, the terms ''mission critical space systems'' and ''mission critical positions/duties,'' previously used in the Program, are carried over to the drug and alcohol testing clause as a point of reference for defining contract personnel and contract functions which come under the civil space employee testing requirements. While the term ''mission critical space systems'' is carried over, the definition is revised from ''The Space Shuttle and other critical space systems, including Space Station Freedom, designated Expendable Launch Vehicles (ELV's), designated payloads, Shuttle Carrier Aircraft and other designated resources that provide access to space'' to ''the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.'' The revised definition deletes obsolete references such as the ''Space Station Freedom'' and ''Shuttle Carrier Aircraft'' and characterizes the systems which are critical to NASA's space mission.

• The statement that use of a controlled substance in accordance with a valid prescription or otherwise authorized by law is moved from the definitions to 1823.570–1 to paragraph (c)(1) of the clause, so that contractors may readily see when use of a controlled substance may be permitted.

• A reference is added to NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, Appendices A and B on ''Testing Designated Positions'' (TDPs) for federal employees, as a guide for contractors to use when designating ''sensitive'' positions. This is intended as a guide and does not change the application of the policy.

• The clause contained an outdated **Federal Register** reference to the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published by the Department of Health and Human Services. The reference to the Department of Transportation's procedures at 49 CFR part 40 is revised to include the appropriate title, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

• The list of drugs required to be tested is revised from marijuana and cocaine to add amphetamines, opiates and phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR part 40 Section 40.85.

• A new paragraph (5) is added to specify that post-accident testing is required when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed $20,000. Additionally, the contractor is informed that the contracting officer may request the results of this post-accident testing.

The proposed rule will not change the application of the clause. This proposed rule imposes no new reporting requirements. This proposed rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that would meet the objectives of the rule. Excluding small business concerns that may be subject to the rule would not be in the best interest of the small business concerns or the Government, because drug and alcohol testing of contractors performing functions related to mission critical space systems is statutorily mandated and is necessary in order to protect human life and the nation's civil space assets. NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 and RIN number 2700–AE17 in correspondence.

D. Paperwork Reduction Act

The proposed rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR 1823, 1846, and 1852

Government procurement.

Cynthia D. Boots,

Alternate Federal Register Liaison.

Accordingly, 48 CFR parts 1823, 1846, and 1852 are proposed to be amended as follows:

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

■ 1. The authority citation for part 1823 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

1823.570–1 [Revised]

■ 2. Section 1823.570–1 is revised by:
■ a. Removing the introductory paragraph,
■ b. Revising the definition for ''Employee in a sensitive position'', and
■ c. Adding the definitions for ''Mission Critical Space Systems'' and ''Mission Critical Positions/Duties'' to read as follows:

Subpart 1823.5—Drug-Free Workplace

* * * * *

1823.570–1 Definitions.

''Employee in a sensitive position'' means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated ''mission critical'' or performing mission-critical duties. The term also includes any applicant who is tentatively selected for a position described in this paragraph.

''*Mission Critical Space Systems''* means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

''*Mission Critical Positions/Duties''* means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission.

* * * * *

1823.570–2 [Revised]

■ 3. Section 1823.570–2 is revised to read as follows:

1823.570–2 Contract clause.

The contracting officer shall insert the clause at 1852.223–74, ''Drug- and Alcohol-Free Workforce,'' in all solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items.

* * * * *

PART 1846—QUALITY ASSURANCE

■ 4. The authority citation for part 1846 continues to read as follows:

Authority: U.S.C. 2473(c)(1).

1846.370 [Revised]

■ 5. Section 1846.370 is revised to read as follows:

1846.370 NASA contract clauses

The contracting officer shall insert the clause at 1852.246–73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.223–74 [Revised]

■ 7. Section 1852.223–74 is revised by:
■ a. Amending paragraph (a),
■ b. Amending paragraphs (b)(2) through (b)(4)
■ c. Adding a new paragraph (b)(5) to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–2, insert the following clause:

Drug- and Alcohol-Free Workforce (XX/XXXX)

(a) Definitions.

''Employee in a sensitive position'' means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated mission critical or performing mission critical duties. The term also includes any applicant who is tentatively selected for a position described in this paragraph.

''*Mission Critical Space Systems''* means the collection of all space-based and ground-based systems used to conduct space missions or support activity in space, including, but not limited to, the crewed space system, space-based communication and navigation systems, launch systems, and mission/launch control.

''*Mission Critical Positions/Duties''* means positions or duties which, if performed in a faulty, negligent, or malicious manner, could jeopardize mission critical space systems and/or delay a mission.]

(b) * * *

(2) In determining which positions to designate as ''sensitive,'' the contractor may use NASA Procedural Requirements (NPR) 3792.1, NASA's Plan for a Drug Free Workplace, Appendices A and B on ''Testing Designated Positions'' (TDPs) for Federal employees, as a guide for the criteria and in designating ''sensitive'' positions for contractor employees.

(3) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (73 FR 71858) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs.''

(i) The Contractor shall test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine (PCP) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs Mandatory Guidelines, Section 3.1, and 49 CFR 40.85.

(ii) The contractor shall comply with the requirements and procedures for alcohol testing at 49 CFR part 40.

(iii) The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements this clause.

(5) The contractor shall conduct post-accident testing when the contractor determines the employee's actions are reasonably suspected of having caused or contributed to an accident resulting in death or personal injury requiring immediate hospitalization or damage to Government or private property estimated to exceed $20,000. Upon request, the Contractor shall provide the results of post-accident testing to the Contracting Officer.

* * * * *

1852.246–70 [Removed]

■ 8. Section 1852.246–70 is removed.

[FR Doc. 2015–10945 Filed 5–7–15; 8:45 am]

BILLING CODE 7510–13–P

Notices

Federal Register
Vol. 80, No. 89
Friday, May 8, 2015

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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Washington State Crop Improvement Association of Pullman, Washington, an exclusive license to the variety of field pea described in Plant Variety Protection Certificate Application Number 201500303, ''HAMPTON,'' dated April 13, 2015.

DATES: Comments must be received on or before June 8, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this plant variety as Washington State Crop Improvement Association of Pullman, Washington has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–11132 Filed 5–7–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 4, 2015.

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), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by June 8, 2015. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Grain Inspection, Packers and Stockyard Administration

Title: Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers.

OMB Control Number: 0580–0022.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), with few exceptions, requires that all grain shipped from the United States must be officially inspected and weighed. The Grain Inspection, Packers and Stockyards Administration (GIPSA) amended section 7 CFR 800.18 of the regulations to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers.

Need and Use of the Information: To comply with the waiver of the mandatory inspection and weighing requirements, GIPSA requires exporters of high quality specialty grain to maintain records generated during the normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes. These records are maintained for a period of 3 years. This requirement is essential to ensure exporters of high quality specialty grain in containers comply with the waiver requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 240.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–11096 Filed 5–7–15; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0096]

Notice of Decision To Authorize the Interstate Movement of Sea Asparagus Tips From Hawaii Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the interstate movement of fresh sea asparagus tips from Hawaii into the continental United States. Based on the findings of a pest list and a risk management document, which we made available to the public for review and comment through a previous notice, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the movement of fresh sea asparagus tips from Hawaii into the continental United States.

DATES: Effective May 8, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Regulated Articles From Hawaii and the Territories'' (7 CFR 318.13–1 through 318.13–26, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

Section 318.13–4 contains a performance-based process for approving the interstate movement of certain fruits and vegetables from Hawaii and the U.S. territories that, based on the findings of a pest risk analysis, can be safely moved subject to one or more of the six phytosanitary measures listed in § 318.13–4(b).

APHIS received a request from the Hawaii Department of Agriculture to allow the interstate movement of fresh sea asparagus tips (*Salicornia bigelovii* Torr.) to the continental United States. Hawaii has indicated a specific interest in production and shipment of fresh sea asparagus tips, which are currently prohibited from interstate movement from Hawaii to the continental United States.

In accordance with the process in § 318.13–4, we published a notice [1] in the **Federal Register** on January 23, 2015 (80 FR 3548–3549, Docket No. APHIS–2014–0096), in which we announced, for review and comment, the availability of a pest list that identifies pests of quarantine significance that could follow the pathway of interstate movement of sea asparagus tips into the continental United States. Based on that pest list, we prepared a risk management document (RMD) to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We solicited comments on the pest list and RMD for 60 days ending on March 24, 2015. We received two comments by that date, from an organization of State plant regulatory agencies and a private citizen. Neither commenter opposed the action; however, one commenter asked for the scientific name and a general description of sea asparagus.

As stated in the RMD, sea asparagus (*Salicornia bigelovii* Torr.) is grown in salt water ponds on floating plant cultivation platforms where their roots are exposed to brackish waters. The asparagus tips do not touch water, soil, or sediments. Sea asparagus is sometimes referred to as ''sea beans'' or ''sapphire greens'' on restaurant menus and ingredient lists.

Therefore, in accordance with § 318.13–4, we our announcing our decision to authorize the interstate movement of sea asparagus from Hawaii to the continental United States subject to the following phytosanitary measures:

- Sea asparagus tips must be moved interstate as commercial consignments only, and
- Each consignment is subject to pre-departure inspection in Hawaii prior to interstate movement to the continental United States.

These conditions will be listed in the Hawaii Fruits and Vegetables Manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/hawaii.pdf*).

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

[1] To view the notice, pest list, RMD, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0096.*

Done in Washington, DC, this 4th day of May 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–11124 Filed 5–7–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0005]

Ongoing Equivalence Verifications of Foreign Food Regulatory Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; response to comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is responding to comments on the **Federal Register** notice, ''Ongoing Equivalence Verifications of Foreign Food Regulatory Systems,'' it published on January 25, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

Imported meat, poultry, and egg products must meet all applicable statutory provisions and regulations, including standards for safety, wholesomeness, and labeling applicable to similar products produced in the United States (see 21 U.S.C. 620, 466, and 1046; 9 CFR 327.2, 381.196, and 590.910). Foreign meat, poultry, and egg products food regulatory systems may apply equivalent sanitary measures if those measures provide the same level of public health protection achieved by U.S. measures.

Any country can apply for eligibility to export meat, poultry, or egg products to the United States. Based on FSIS's review of the information and documentation that the country submits, FSIS decides whether the foreign country's food regulatory system meets all U.S. requirements in the same or an equivalent manner. This is the document analysis. If so, FSIS performs an on-site audit of the entire foreign meat, poultry, or egg products regulatory system. When both the document analysis and on-site audit show that the country's system is equivalent to that of the U.S., FSIS publishes a proposed rule in the **Federal Register** that announces the results of the first two steps and proposes to add

the country to its list of countries eligible to export to the U.S. in FSIS's regulations. After analyzing the public comments that it receives, FSIS makes a final decision about whether the country's system is equivalent based upon all the information it has gathered and publishes a final rule in the **Federal Register** announcing its determination on the country's eligibility. This comprehensive process is described fully on FSIS's Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview.*

Once a country is determined to be eligible to export to the United States, FSIS continues to monitor that country's food regulatory system. In a notice published in the **Federal Register** on January 25, 2013, ''Ongoing Equivalence Verification of Foreign Food Regulatory Systems,'' (78 FR 5409) (hereafter ''the **Federal Register** notice''), FSIS described how it conducts ongoing activities to ensure that food regulatory systems of countries that export meat, poultry, or processed egg products to the United States remain equivalent to FSIS's system. FSIS explained that it uses a three-part approach that includes (1) document reviews, (2) on-site system audits, and (3) port-of-entry (POE) reinspections. FSIS determines the scope and frequency of foreign on-site system audits based on its analysis of the results of its document reviews and its ongoing assessment of a country's performance. This performance-based approach allows FSIS to direct its audit resources to foreign food regulatory systems that appear to pose a greater risk to public health than other foreign systems.

FSIS uses the equivalence questionnaire, called the Self-Reporting Tool (SRT), to collect information for FSIS's document review of the food regulatory systems of countries that are listed in the regulations as eligible to export meat, poultry, or egg products to the United States as well as for the systems of countries interested in becoming eligible (78 FR 5409, January 25, 2013). A copy of the SRT is available on FSIS's Web site at *http://www.fsis.usda.gov/wps/wcm/connect/7893547e-d0d2-4fa9-a984-fdc17228bfcd/SRT.pdf?MOD=AJPERES.* The SRT is a repository for key documents about a foreign food safety inspection system (*e.g.,* inspection system laws, regulations, and policy issuances) that FSIS uses, in addition to on-site audits, to verify whether the laws, regulations, and implementing policies of a foreign country establish an inspection system that is equivalent to the U.S. system. It also allows FSIS to evaluate whether a country maintains system effectiveness and to assess any impacts that an administrative or legislative change has had on a foreign food regulatory system. FSIS conducts a document review at least annually.

The SRT also includes questions for FSIS to use in assessing how frequently it is necessary to conduct on-site audits of the country after FSIS approves export to the United States. FSIS refers to these questions as level of advancement (LOA) questions. The LOA questions are clearly marked in the SRT as ''used for scoring purposes.'' In answering the LOA questions, foreign countries demonstrate the full extent to which they have developed and implemented an equivalent, systems-based approach to food safety regulation that achieves the U.S. level of protection. The SRT and LOA questions may change over time to reflect changes in the United States' inspection system and associated sanitary measures. As explained in the **Federal Register** notice, the LOA questions are derived from the Codex Alimentarius Commissions' Guidelines on the Judgment of Equivalence of Sanitary Measures associated with Food Inspection and Certification systems (CAC/GL 53–2003), and the principles outlined in the joint Food and Agricultural Office of the United Nations (FAO) and World Health Organization (WHO) publication, ''Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems'' (78 FR 5409, January 25, 2013). These questions ask foreign countries to provide information to FSIS on the use of risk analysis principles; the impact of organizational, structural, or administrative change in an exporting country's competent authority; the availability of contingency plans in the country for containing and mitigating the effects of food safety emergencies; the competent authority's willingness and ability to take appropriate actions to manage food safety incidents; and the effectiveness of foodborne disease surveillance systems. For each LOA question, FSIS assigns a score.

In February 2013, FSIS posted more information on LOA questions and scoring in the supplementary document ''Performance-Based Approach to Foreign Country Equivalence Verification Audits and Point-of-Entry (POE) Reinspections,'' which is available on FSIS's Web site at *http://www.fsis.usda.gov/wps/wcm/connect/c10d362b-c978-4578-8b9e-93f956601ccf/Performance_Based_Approach_Equivalence_Verification_0213.pdf?MOD=AJPERES.* In the **Federal Register** notice and the supplementary document, FSIS provided examples of criteria applied to assign an LOA to two aspects of a foreign country's regulatory system (*i.e.,* risk analysis and POE results) but did not provide details on how the various assignments were combined to determine a foreign food regulatory system's overall LOA (78 FR 5409, January 25, 2013). FSIS has since updated and streamlined the SRT questions and restructured the LOA questions (80 FR 9428, February 23, 2015). As a result, FSIS has changed the way that it scores LOA questions. Specifically, a score of zero or one is assigned for each LOA question. FSIS summarizes these scores and applies adjustments as needed to ensure meaningful comparisons when setting each country's LOA. FSIS intends to update the supplementary document to provide more information about this change.

FSIS uses the results from the analysis of the LOA questions, previous on-site audits, and POE results to place exporting countries into one of three categories based on food safety performance, with corresponding audit frequencies: Well-performing countries are to be audited every three years; average-performing countries are to be audited every two years; and adequately-performing countries are to be audited every year.

FSIS received approximately 31 comments in response to the **Federal Register** notice from foreign countries, trade consulting groups, consumer groups, private citizens, a trade association representing the meat industry, and a member of the U.S. Congress.

Recent Changes

On February 23, 2015, FSIS responded to comments on the Agency's document review process for determining and verifying initial and ongoing equivalence (80 FR 9428). FSIS announced that it had streamlined the SRT and launched a Web-based version within its Public Health Information System (PHIS) to more efficiently capture up-to-date information about foreign food regulatory systems.

A summary of the other issues raised by the commenters in response to the **Federal Register** notice and the Agency's responses are below. In addition, FSIS updated the National Advisory Committee on Meat and Poultry Inspection (NACMPI) and the public on the Agency's progress in incorporating NACMPI's 2008 recommendations on the equivalence

process on January 7, 2014, and again on January 13, 2015 (see 78 FR 77643 and 79 FR 77441). On January 7, 2014, FSIS received three comments on the Agency's methodology from two consumer groups and a farmer. On January 13, 2015, FSIS received three comments from two consumer groups and a trade association that represents meat processors. These comments are also summarized and addressed below.

Summary of Comments

Comment: Several commenters stated that FSIS should have published the proposed changes to its ongoing equivalence verification process in the **Federal Register** and considered comments from the public before the Agency implemented any of the changes. The commenters argued that FSIS should not have changed its food safety inspection program without stakeholder involvement. A few commenters stated that FSIS should have also conducted a risk assessment and economic analysis before making any changes to its ongoing equivalence verification process.

Response: FSIS made changes to its ongoing equivalence verification process, such as developing the Microsoft Word and Web-based versions of the SRT, transitioning from an annual on-site audit to less frequent on-site audits based on performance, and launching PHIS to schedule POE sampling over a period of years. These changes did not create new requirements for establishments or foreign countries and, therefore, did not require amendments to the relevant regulations. Matters relating to Agency management are exempt from the notice-and-comment requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)). Similarly, because FSIS did not propose new requirements for the industry or foreign countries, FSIS did not develop a risk assessment or an economic analysis on the Agency's decision to change its ongoing equivalence verification process. Nonetheless, the Agency made its decision-making process public. As noted in the **Federal Register** notice, FSIS held a public meeting with NACMPI on the changes it intended to make before it made any changes to its ongoing equivalence verification process (78 FR 5409, January 25, 2013). Membership of NACMPI is drawn from representatives of consumer groups; producers, processors, and marketers from the meat, poultry, and egg product industries; State and local government officials; and academia. Therefore, the Agency provided an opportunity for stakeholder input before it made any changes to its ongoing equivalence verification process.

On-Site Audits

Comment: FSIS received several comments on the frequency of the Agency's on-site audits of foreign countries' food regulatory systems. A foreign country supported the Agency's determination that annual visits to countries are not necessary when those systems are documented to be performing ''well'' or in an ''average'' way. The foreign country stated that visits every two to three years to these countries, given the other information that is available to FSIS, provide the necessary information for FSIS to determine whether these foreign systems continue to meet the U.S. level of protection.

Several commenters stated that FSIS should, at a minimum, conduct annual audits. These same commenters recommended that the scope and intensity of the annual audits should change, based on risk and the conditions in the country when auditors arrive. For example, these commenters stated that information provided through the SRT should provide information necessary for auditors to focus on particular areas of concern that auditors could adjust as appropriate, given actual conditions once they have arrived. The commenters asserted that this approach would ensure that FSIS was auditing foreign countries on a regular basis but would also allow them to devote finite resources to those areas of greatest concern.

Some commenters who stated that FSIS should audit foreign countries' food regulatory systems at least annually stated that FSIS reduced the number of on-site audits because of budget constraints.

One commenter stated that NACMPI never recommended that the Agency shift from annual on-site audits to periodic on-site audits. The commenter asserted that NACMPI recommended that FSIS continue to audit foreign country's food regulatory systems annually and consider risk in determining whether more frequent or more focused audits were necessary.

Another commenter stated that FSIS is not conducting on-site audits at a minimum frequency of once every three years for all countries that are exporting meat, poultry, or egg products to the United States.

Two commenters stated that food product recalls of imported products from foreign countries show that food safety issues have emerged since FSIS altered its audit frequency schedule. A few other commenters cited recent safety issues related to products produced in China (*e.g.,* baby formula and jerky dog treats linked to illnesses and deaths of babies and dogs, respectively) to support their claim that food products produced in other countries are not always safe and wholesome. The commenters also stated that they were concerned about the safety of poultry products produced in China.

Response: FSIS did not change its methodology because of budget constraints. FSIS determined, based on NACMPI's recommendations and audits conducted over the years, that annual visits are not necessary for countries with systems performing in an average way or well (see 78 FR 5409, January 25, 2013). If FSIS is annually receiving up-to-date documentation from the foreign country on the state of its food safety system, conducting periodic on-site audits of these countries that are informed by the documentation that the Agency receives, and reviewing and analyzing FSIS POE results, FSIS is able to determine on an on-going basis whether the countries' food regulatory systems are maintaining equivalence to FSIS's system, or whether additional audits are necessary.

FSIS may adjust the scope and intensity of audits based on risk and the conditions in the country when auditors arrive. In addition, for countries that FSIS has determined to be eligible to export product to the U.S., FSIS develops an audit plan based on prior concerns that FSIS has identified with the country's system, any relevant changes the country has made since the last audit, and recent information that the country has submitted to FSIS concerning its system (such as information submitted through the SRT) (see FSIS Notice 35–14, *Ongoing Foreign Equivalence Verification Audits,* available at *http://www.fsis.usda.gov/wps/wcm/connect/ac10a0c7-792f-4323-a0c7-15a8d4ee71bd/35-14.pdf?MOD=AJPERES*).

NACMPI did not recommend that the Agency conduct annual on-site audits to verify ongoing equivalence. In 2008, NACMPI recommended that the ''length of time between audits can be based more on risk and compliance history in the foreign country,'' [1] and that ''a three-

[1] National Advisory Committee on Meat and Poultry Inspection, ''Report of Sub-committee Number 1,'' Washington, DC (2008). Available at: *http://www.fsis.usda.gov/wps/wcm/connect/c669100d-7282-4ee2-b04c-2a799516a962/NACMPI_Subcommittee1_082708.pdf?MOD=AJPERES.*

tiered system may be appropriate.'' [2] NACMPI also recommended that the scope and frequency of on-site audits and POE reinspections be adjusted based on the capability of a country to be transparent and to share useful regulatory information and compliance history. Under FSIS's three-part approach, FSIS bases the frequency of on-site audits on the results of FSIS's assessment of the country's performance. FSIS assesses all countries annually. The assessment focuses on each eligible country's overall food safety performance relative to the performance of other eligible countries. The assessment includes a statistical analysis of compliance data from POE re-inspections and results from FSIS's previous on-site audits of the country's government offices, establishments, and laboratories. This approach is consistent with NACMPI's recommendation that FSIS adopt a risk-informed and compliance-based approach.

FSIS acknowledges that it has not audited all countries eligible to export at least once every three years. Some time was necessary to work through the mechanics of the transition from an annual on-site audit to less frequent on-site audits based on performance (78 FR 5409, January 25, 2013). Going forward, FSIS will conduct on-site audits of countries eligible to export product to the U.S. at least once every three years.

Approximately the same number of recalls involving imported products occurred when FSIS conducted annual on-site audits as have occurred since FSIS changed the frequency of on-site audits in certain countries.[3] FSIS is committed to protecting the health of U.S. consumers, and it will continue to make every effort to ensure that meat, poultry, and egg products imported into the United States are as safe as products produced in this country.

Finally, regarding concerns about products from China, FSIS does not inspect baby formula or jerky dog treats. These products are under the jurisdiction of the U.S. Food and Drug Administration (FDA). Currently, China is only authorized to export to the United States processed poultry products that originated in the U.S. or another equivalent country. FSIS will reinspect at POE any processed (fully cooked) poultry products exported from China. China has not yet exported such product to the United States. FSIS will conduct annual on-site audits of China's regulatory system for at least the next three years, as the Agency would do for any country that has just been found to be equivalent.

Comment: A few commenters requested that FSIS provide data that show that the new methodology with periodic on-site audits provides the same level of public health protection as FSIS's previous approach with annual on-site audits. The commenters stated that if the data do not exist, then FSIS should establish metrics to measure the effectiveness of the new methodology.

Response: FSIS has had almost 20 years of experience in determining and verifying system equivalence, including conducting on-site audits and POE reinspections. Based on this accumulated experience and on-going analysis discussed in the next paragraph, FSIS is confident that its current approach provides for at least the same level of public health protection as FSIS's previous approach with annual on-site audits. As noted above, approximately the same number of recalls involving imported products occurred when FSIS conducted annual on-site audits as have occurred since FSIS changed the frequency of on-site audits in certain countries.

FSIS measures the effectiveness of its methodology by routinely analyzing information from document reviews, on-site audits, and data from POE reinspections and recalls related to imported products. Since the PHIS import module was implemented on May 29, 2012, FSIS has used PHIS to generate detailed reports, including reports on the amount of product presented for reinspection; the types of activities performed at reinspection; the amount of product refused entry; and whether the product was refused because it failed a Public Health Critical exam (*e.g.,* positive result for Shiga toxin-producing *Escherichia coli* (STEC) in raw, non-intact beef product). FSIS uses the reports to track trends and to facilitate routine management oversight. FSIS generates these reports at least quarterly. FSIS's analysis of this reported data shows that FSIS's current approach ensures that imported meat, poultry, or egg products are safe, wholesome, and properly labeled.

Comment: FSIS also received several comments on how the Agency determines a country's performance score. One commenter stated that FSIS should not determine the performance score for each eligible country based on a comparison of one country's performance to another country's performance because it is similar to ''curve grading.'' The commenter stated that the ''curve grading'' concept could provide a false sense of food safety compliance when countries are being evaluated relative to one another instead of against FSIS's import requirements.

Two commenters stated that it was not clear how frequently FSIS will audit each country. The commenters requested that FSIS identify which countries it will audit on an annual basis.

A few commenters asserted that the LOAs are not well defined and requested that FSIS clarify how it will assign LOAs when determining a country's performance score. One commenter stated that assigning an LOA to each country or to each equivalence component would complicate the process, and that FSIS should assign one LOA to a group of factors.

Response: FSIS disagrees that the Agency's performance assessment could provide a ''false sense of food safety compliance.'' The countries are being evaluated against FSIS's requirements. Further, FSIS will not release the specific annual audit schedule with names of countries it will audit each year because of concerns about security of its auditors, and because providing this information in advance may allow countries too much time to prepare in advance for their audits.

As explained above, the SRT includes LOA questions that FSIS encourages countries to answer to demonstrate what they are doing that is above and beyond what is required to be equivalent to FSIS's system. FSIS then scores the responses.

The LOA responses are just one of the factors that FSIS considers as part of an annual analysis of country performance to determine the frequency and scope of on-site audits (78 FR 5409, January 25, 2013). Previous on-site audits and POE results also contribute to FSIS's assessment of a country's performance and to FSIS's determination of the appropriate audit frequency for that country.

Comment: A few commenters encouraged FSIS to post its audit reports on its Web site in a timelier manner. One commenter noted that prior to 2009, FSIS posted its audit reports within 120 days of the completion of the audit.

Response: FSIS intends to make audit reports public in a timelier manner.

[2] National Advisory Committee on Meat and Poultry Inspection, ''Report of Sub-committee Number 2,'' Washington, DC (2008). Available at: *http://www.fsis.usda.gov/wps/wcm/connect/802e06af-81c1-4fc4-b582-6ccea24d8cba/NACMPI_Subcommittee2_082708.pdf?MOD=AJPERES.*

[3] From 2004 to 2008, approximately 16 recalls involved imported amenable products. In 2009, FSIS began its transition from its annual on-site audit to less frequent audits based on performance; there were approximately six recalls that year. From 2010 to 2014, there were approximately 15 recalls. FSIS did not include recalls that involved amenable products produced by a foreign establishment that were delivered into commerce without the benefit of FSIS POE reinspection because FSIS has changed its policy on these types of recalls over the years.

FSIS is currently evaluating how best to improve and streamline this process.

POE Reinspections

Comment: One commenter stated that the frequency of POE reinspection testing for microbiological and chemical hazards should be dependent on the outcomes of country performance. The commenter previously received regular updates from FSIS on consignment testing frequency and results of testing for a particular country, with a breakdown by species and defect type. The commenter requested that FSIS resume this reporting and questioned whether it can be provided to exporting countries through PHIS.

Another commenter stated that FSIS should offer more incentives to high performing countries in addition to reduced audit frequency. The commenter argued that FSIS should not reinspect every product from high performing countries. A few other commenters stated that FSIS should streamline the reinspection process by allowing the exporting countries to conduct inspections and sampling prior to shipment. The commenters asserted that this process would provide for the earliest possible detection of potential problems, prevent recalls, and reduce considerable transport and subsequent storage costs associated with such shipments. Another commenter suggested that FSIS collaborate with the FDA and U.S. Customs and Border Protection (CBP) to develop a consistent standard in the U.S. for determining which products are low or high risk.

Response: FSIS is working to develop reports on POE testing for exporting countries. These reports will be provided through PHIS. FSIS will notify exporting countries when these reports are available.

FSIS does not intend to change its POE reinspection procedures at this time. In compliance with statutory and regulatory requirements (21 U.S.C. 620, 466, and 1046; 9 CFR 327.6, 381.199, and 590.925), FSIS reinspects all shipments presented at ports of entry to ensure proper certification by the foreign country and examines each shipment for general condition and labeling compliance. Additionally, PHIS randomly assigns more targeted reinspections of the meat and poultry presented to include laboratory sampling and testing to identify microbiological pathogens, drug and chemical residues, and species. PHIS assigns the type of reinspection based on compliance history of the foreign establishment and country and product volume.

Because FSIS reinspection is necessary to ensure that all imported meat, poultry, and egg products are properly labeled and not adulterated, FSIS will not rely on other country results in determining whether to allow the product to enter domestic commerce. However, FSIS is committed to collaborating with other U.S. agencies to enhance and streamline inspection efforts. For example, in April 2014, FSIS began a pilot program with CBP's Participating Government Agency (PGA) Message Set, which allows FSIS to electronically collect the information required by FSIS form 9540–1, *Import Inspection Application and Report* (see 79 FR 56220). FSIS's PHIS interfaces with CBP's Automated Commercial Environment (ACE), enabling a seamless transfer of data required for the application for FSIS import inspection in advance of the shipment arrival. The PGA Message Set pilot will remove tens of thousands of paper-based entry forms from the process and will save Agency resources by avoiding manual data entry. Meat, poultry, and processed egg product inspection and enforcement will be more efficient by having the required data available when shipments arrive at the official import inspection facility, benefitting FSIS, industry, trading partners, and U.S. citizens.

In addition, the PGA Message Set pilot supports more efficient protection of public health by transferring all data from the industry for products under FSIS jurisdiction, thus providing the Agency with specific information on FSIS regulated products that could be potentially entering the country from ineligible sources.

Finally, the pilot will facilitate compliance through early filing. Through ACE, importers file their FSIS application with their Customs entry, in advance of the shipment arriving at the official import inspection establishment. This early filing will enable FSIS inspection personnel to better monitor shipments and will facilitate faster recalls if amenable products produced by foreign establishments are delivered into commerce without the benefit of FSIS POE reinspection.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf*, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done in Washington, DC, on May 5, 2015.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2015–11250 Filed 5–7–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Value-Added Producer Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2015 applications for the Value-Added Producer Grant (VAPG) program. Approximately $30 million in funding is available to help agricultural producers enter into value-added activities for FY 2015. Approximately $10.2 million has been appropriated through the Consolidated and Further Continuing Appropriations Act of 2015 and the remaining funds have been made available through either carry over funding from FY 2014 or through the Agricultural Act of 2014 (2014 Farm Bill). The Agency is concurrently publishing a final rule that will revise the current VAPG regulation at 7 CFR part 4284, subpart J in response to: The 2014 Farm Bill; comments received on the interim rule, which was published on February 23, 2011 (76 FR 10122); a listening session, held on April 25, 2014, on the VAPG provisions in the 2014 Farm Bill; and to provide program clarifications. The Agency is encouraging applications that directs grants to projects based in or serving census tracts with poverty rates greater than or equal to 20 percent. This emphasis will support Rural Development's (RD) mission of improving the quality of life for rural Americans and commitment to directing resources to those who most need them.

DATES: You must submit your application by July 7, 2015 or it will not be considered for funding. Paper applications must be postmarked and mailed, shipped or sent overnight by this date. You may also hand carry your application to one of our field offices, but it must be received by close of business on the deadline date. Electronic applications are permitted via *http://www.grants.gov* only, and must be received before midnight Eastern Time July 2, 2015. Late applications are not eligible for grant funding under this Notice.

ADDRESSES: You should contact your USDA Rural Development State Office if you have questions about eligibility or submission requirements. You are encouraged to contact your State Office well in advance of the application deadline to discuss your project and to ask any questions about the application process. Application materials are available at *http://www.rd.usda.gov/programs-services/value-added-producer-grants.*

If you want to submit an electronic application, follow the instructions for the VAPG funding announcement on *http://www.grants.gov.* Please review the Grants.gov

Web site at *http://grants.gov/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. If you want to submit a paper application, send it to the State Office located in the State where your project will primarily take place. You can find State Office Contact information at *http://www.rd.usda.gov/contact-us/state-offices.*

FOR FURTHER INFORMATION CONTACT: Grants Division, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW., MS 3253, Room 4008-South, Washington, DC 20250–3253, or call 202–690–1374.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: USDA Rural Business-Cooperative Service.

Funding Opportunity Title: Value-Added Producer Grant.

Announcement Type: Initial funding request.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates: Application Deadline. You must submit your complete paper application by July 7, 2015, or it will not be considered for funding. Electronic applications must be received by *http://www.grants.gov* no later than midnight Eastern Time July 2, 2015, or it will not be considered for funding.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0039.

A. Program Description

The VAPG program is authorized under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), as amended by section 6203 of the Agricultural Act of 2014 (Pub. L. 113–79) (see 7 U.S.C. 1632a). Applicants must adhere to the requirements contained in the program regulation, 7 CFR 4284, subpart J, which is incorporated by reference in this Notice.

The primary objective of this grant program is to assist Independent Producers, Agricultural Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Businesses in starting or expanding value-added activities related to the processing and/or marketing of Value-Added Agricultural Products. Grants will be awarded competitively for either planning or working capital projects directly related to the processing and/or marketing of value-added products. Generating new products, creating and expanding marketing opportunities, and increasing producer income are the end goals of the program. All proposals must demonstrate economic viability and sustainability in order to compete for funding.

Funding priority will be made available to Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, Operators of Small and Medium-Sized Farms and Ranches structured as Family Farms or Ranches, Farmer or Rancher Cooperatives, and projects proposing to develop a Mid-Tier Value Chain. See 7 CFR 4284.923 for Reserved Funds eligibility and 7 CFR 4284.924 for Priority Scoring eligibility.

Definitions

The terms you need to understand are defined in 7 CFR 4284.902.

B. Federal Award Information

Type of Instrument: Grant.

Fiscal Year 2015 Funds: Approximately $10.2 million.

Approximate Number of Awards: Approximately 300.

Available Total Funding: Approximately $30 million.

Maximum Award Amount: Planning—$75,000; Working Capital—$250,000.

Project Period: Up to 36 months depending on the complexity of the project.

Anticipated Award Date: September 30, 2015.

Reservation of Funds: Ten percent of available funds for applications will be reserved for applications submitted by Beginning and Socially-Disadvantaged Farmers or Ranchers, and an additional ten percent of available funds for applications from farmers or ranchers proposing development of Mid-Tier Value Chains. Reserved funds not obligated prior to June 30, 2015, will be used for the VAPG general competition. If this is the case, Beginning and

Socially-Disadvantaged Farmers or Ranchers and applicants proposing Mid-Tier Value Chains will compete with other eligible VAPG applications.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements. Applications which fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further.

1. Eligible Applicants

You must demonstrate that you meet all the applicant eligibility requirements of 7 CFR 4284.920 and 4284.921 (Ineligible applicants). This includes meeting the definition requirements at 7 CFR 4284.902 for one of the following applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative or Majority-Controlled Producer-Based Business and also meeting the Emerging Market, Citizenship, Legal Authority and Responsibility, Multiple Grants and Active Grants requirements of the section. Required documentation to support eligibility is contained at 7 CFR 4284.931.

Federally-recognized Tribes and tribal entities must demonstrate that they meet all definition requirements for one of the four eligible applicant types. Rural Development State Offices and posted application toolkits will provide additional information on Tribal eligibility.

Per 4284.921, an applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

2. Cost-Sharing or Matching

There is a matching funds requirement of at least $1 for every $1 in grant funds provided by the Agency (matching funds plus grant funds must equal proposed Total Project Costs). Matching funds may be in the form of cash or eligible in-kind contributions and may be used only for eligible project purposes. Matching funds must be available at time of application and must be certified and verified as described in 7 CFR 4284.931(b)(3) and (4). Note that matching funds must also be discussed as part of the scoring criterion Commitments and Support as described in section E.1. (c).

3. Project Eligibility

You must demonstrate that you meet all the project eligibility requirements of 7 CFR 4284.922.

(a) *Product eligibility.* Applicants for both planning and working capital grants must meet all requirements at 7 CFR 4284.922(a), including that your value-added product must result from one of the five methodologies identified in the definition of Value-Added Agricultural Product at 7 CFR 4284.902. In addition, you must demonstrate that, as a result of the project, the customer base for the agricultural commodity or value-added product will be expanded, by including a baseline of current customers for the commodity, and an estimated target number of customers that will result from the project; and that, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the applicant producer(s) of the agricultural commodity, by including a baseline of current revenues from the sale of the agricultural commodity and an estimate of increased revenues that will result from the project.

(b) *Purpose eligibility.* Applicants for both planning and working capital grants must meet all requirements at 7 CFR 4284.922(b) regarding maximum grant amounts, verification of matching funds, eligible and ineligible uses of grant and matching funds, a substantive work plan and budget.

(i) Planning Grants. A planning grant is used to fund development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning grant funds may not be used to fund working capital activities.

(ii) Working Capital Grants. This type of grant provides funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds. Working capital funds may not be used for planning purposes.

(c) *Reserved Funds Eligibility.* To qualify for Reserved Funds as a Beginning or Socially-Disadvantaged Farmer or Rancher or if you propose to develop a Mid-Tier Value Chain, you must meet the requirements found at 7 CFR 4284.923. If your application is eligible, but is not awarded under the Reserved Funds, it will automatically be considered for general funds in that same fiscal year, as funding levels permit.

(d) *Priority Points.* To qualify for Priority Points for projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or if you are an Operator of a Small or Medium-sized Farm or Ranch structured as a Family Farm, a Veteran Farmer or Rancher, propose a Mid-Tier Value Chain project, or are a Farmer or Rancher Cooperative, you must meet the applicable eligibility requirements at 7 CFR 4284.923 and 4284.924 and must address the relevant proposal evaluation criterion.

4. Eligible Uses of Grant and Matching Funds

Eligible uses of grant and matching funds are discussed, along with examples, in 7 CFR 4284.923. In general, grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined at 7 CFR 4284.923(a) and (b).

5. Ineligible Uses of Grant and Matching Funds

A list (not all inclusive) of ineligible uses of grant and matching fund is found in 7 CFR 4284.926. An Applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Multiple applications from separate entities with identical or greater than 75 percent common ownership, or from a parent, subsidiary or affiliated organization (with ''affiliation'' defined by Small Business Administration regulation 13 CFR 121.103, or successor regulation) are not permitted. Further, Applicants who have already received a Planning Grant for the proposed project cannot receive another Planning Grant for the same project. Applicants who have already received a Working Capital Grant for the proposed project cannot receive any additional grants for that project.

D. Application and Submission Information

1. Address To Request Applications

The application toolkit, regulation, and official program notification for this funding opportunity can be obtained online at *http://www.rd.usda.gov/programs-services/value-added-*

producer-grants. Or, you can contact your USDA Rural Development State Office by visiting *http://www.rd.usda.gov/contact-us/state-offices.* You may also obtain a copy by calling 202–690–1374. The toolkit contains an application checklist, templates, required grant forms, and instructions. Although the Agency highly recommends their use, use of the templates in the toolkit is not mandatory.

2. Content and Form of Application Submission

You may submit your application in paper form or electronically through Grants.gov. Your application must contain all required information.

To submit an application electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications.

You can locate the Grants.gov downloadable application package for this program by using a keyword, the program name, or the Catalog of Federal Domestic Assistance Number for this program.

When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

To use Grants.gov, you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

You must submit all of your application documents electronically through Grants.gov.

After electronically submitting an application through Grants.gov, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.

If you want to submit a paper application, send it to the State Office located in the State where your project will primarily take place. You can find State Office Contact information at: *http://www.rd.usda.gov/contact-us/state-offices.* An optional-use Agency application template is available online at *http://www.rd.usda.gov/programs-services/value-added-producer-grants.*

Your application must contain all of the required forms and proposal elements described in 7 CFR 4284.931, unless otherwise clarified in this Notice. You are encouraged, but not required to utilize the Application Toolkits found at *http://www.rd.usda.gov/programs-services/value-added-producer-grants.* Basic application contents are outlined below:

- Standard Form (SF)–424, ''Application for Federal Assistance,'' to include your DUNS number and SAM (CAGE) code and expiration date. Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the CAGE code and expiration date and the DUNS number in your application, it will not be considered for funding.
- SF–424A, ''Budget Information-Non-Construction Programs.'' This form must be completed and submitted as part of the application package.
- SF–424B, ''Assurances—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.
- Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' if you are a corporation. A corporation is any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands, or the various territories of the United States including American Samoa, Guam, Midway Islands, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. Corporations include both for profit and non-profit entities.
- You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.
- Executive Summary and Abstract. A one-page Executive Summary containing the following information: Legal name of applicant entity, application type (planning or working capital), applicant type, amount of grant request, a summary of your project, and whether you are submitting a simplified application, and whether you are requesting Reserved Funds. Also include a separate abstract of up to 100 words briefly describing your project.
- Eligibility discussion.
- Work plan and budget.
- Performance evaluation criteria.
- Proposal evaluation criteria.
- Certification and verification of matching funds.
- Reserved Funds and Priority Point documentation (as applicable).
- Appendices containing required supporting documentation.

3. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

In order to be eligible (unless you are excepted under 2 CFR 25.110(b), (c) or (d), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at *https://www.sam.gov/portal/public/SAM/;* and

(c) Continue to maintain an active SAM registration with current information at all times during which you have an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Agency may not make a Federal award to you until you have complied with all applicable DUNS and SAM requirements. If you have not fully complied with the requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. Please refer to Section F. 2. for additional submission requirements that apply to grantees selected for this program.

4. Submission Dates and Times

Application Deadline Date: July 7, 2015.

Explanation of Deadlines: Paper applications must be postmarked and mailed, shipped, or sent overnight by July 2, 2015. The Agency will determine whether your application is late based on the date shown on the postmark or shipping invoice. You may also hand carry your application to one of our field offices, but it must be received by close of business on the deadline date. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day. Late applications will automatically be considered ineligible and will not be evaluated further.

Electronic applications must be received at *http://www.grants.gov* no later than midnight Eastern time July 2, 2015, to be eligible for FY 2015 grant funding. Please review the Grants.gov Web site at *http://grants.gov/applicants/organization_registration.jsp* for instructions on the process of registering

your organization as soon as possible to ensure you are able to meet the electronic application deadline. Grants.gov will not accept applications submitted after the deadline.

5. Intergovernmental Review

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain a SPOC may be obtained at *http://www.whitehouse.gov/omb/grants_spoc.* If your State has a SPOC, you must submit your application directly for review. Any comments obtained through the SPOC must be provided to RD for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, RD will submit your application to the SPOC or other appropriate agency or agencies.

6. Funding Restrictions

Funding limitations and reservations found in the program regulation at 7 CFR 4284.927 will apply, including:

(a) Use of Funds. Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount. Grant funds may not be used to pay any costs of the project incurred prior to the date of grant approval. Grant and matching funds may only be used for eligible purposes. (see examples of eligible and ineligible uses in 7 CFR 4284.923 and 4284.924, respectively).

(b) Grant Term (project period). Your project timeframe or grant period can be a maximum of 36 months in length from the date of award. Your proposed grant period should begin no earlier than the anticipated award announcement date in this notice, September 30, 2015, and should end no later than 36 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your project activities must begin within 90 days of that date of award. The length of your grant period should be based on your project's complexity, as indicated in your application work plan. For example, it is expected that most planning grants can be completed within 12 months.

(c) Program Income. If Program Income is earned during the grant period as a result of the project activities, it is subject to the requirements in 2 CFR 200.80, and must be managed and reported accordingly.

(d) Majority Controlled Producer-Based Business. The aggregate amount of awards to Majority Controlled Producer-Based Businesses in response to this announcement shall not exceed 10 percent of the total funds obligated for the program during the fiscal year.

(e) Reserved Funds. Ten percent of all funds available for FY 2015 will be reserved to fund projects that benefit Beginning Farmers or Ranchers, or Socially-Disadvantaged Farmers or Ranchers. In addition, 10 percent of total funding available will be used to fund projects that propose development of Mid-Tier Value Chains as part of a Local or Regional Supply Chain Network. See related definitions in 7 CFR 4284.902.

(f) Disposition of Reserved Funds Not Obligated. For this announcement, any reserved FY 2015 funds that have not been obligated by June 30, 2015, will be available to the Secretary to make VAPG grants in accordance with 7 CFR 4284.927(d).

7. Other Submission Requirements

(a) National Environmental Policy Act

This notice has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act (NEPA) regulation found at 7 CFR 1940.310(e)(3) of subpart G, ''Environmental Program.'' We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment. Individual awards under this Notice are hereby classified as Categorical Exclusions according to 7 CFR 1940.310(e), which do not require any additional documentation.

(b) Civil Rights Compliance Requirements

All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

Applications will be reviewed and processed as described at 7 CFR 4284.940. The Agency will review your application to determine if it is complete and eligible. If at any time, the Agency determines that your application is ineligible, you will be notified in writing as to the reasons it was determined ineligible and you will be informed of your review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2015 funds.

The Agency will only score applications in which the applicant and project are eligible, which are complete and sufficiently responsive to program requirements, and in which the Agency agrees on the likelihood of financial feasibility for working capital requests. We will score your application according to the procedures and criteria specified in 7 CFR 4284.942, and with tiered scoring thresholds as specified below.

1. Scoring Criteria

For each criterion, you must show how the project has merit and why it is likely to be successful. If you do not address all parts of the criterion, or do not sufficiently communicate relevant project information, you will receive lower scores. VAPG is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The maximum number of points that can be awarded to your application is 100. For this announcement, the minimum score requirement for funding is 50 points.

The Agency application toolkit provides additional instruction to help you to respond to the criteria below.

(a) *Nature of the Proposed Venture (graduated score 0–30 points).*

For both planning and working capital grants, you should discuss the technological feasibility of the project, as well as operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the agricultural commodity or value-added product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw agricultural commodity to the project. You should reference third-party data and other information that specifically supports your value-added project; discuss the value-added process you are proposing; potential markets and distribution channels; the value to be added to the raw commodity through

the value-added process; cost and availability of inputs, your experience in marketing the proposed or similar product; business financial statements; and any other relevant information that supports the viability of your project. Working capital applicants should demonstrate that these outcomes will result from the project. Planning grant applicants should describe the expected results, and the reasons supporting those expectations.

Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address the criterion.

(ii) 1–5 points will be awarded if you do not address each of the following: Technological feasibility, operational efficiency, profitability, and overall economic sustainability.

(iii) 6–13 points will be awarded if you address technological feasibility, operational efficiency, profitability, and overall economic sustainability, but do not reference third-party information that supports the success of your project.

(iv) 14–22 points will be awarded if you address technological feasibility, operational efficiency, profitability, and overall economic sustainability, supported by third-party information demonstrating a reasonable likelihood of success.

(v) 23–30 points will be awarded if all criterion components are well addressed, supported by third-party information, and demonstrate a high likelihood of success.

(b) *Qualifications of Project Personnel (graduated score 0–20 points).*

You must identify all individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and show that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. You must include the qualifications of those individuals responsible for leading or managing the total project (applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). You must discuss the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, you must provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address the criterion.

(ii) 1–4 points will be awarded if qualifications and experience of all staff is not addressed and/or if necessary qualifications of unfilled positions are not provided.

(iii) 5–9 points will be awarded if all project personnel are identified but do not demonstrate qualifications or experience relevant to the project.

(iv) 10–14 will be awarded if most key personnel demonstrate strong credentials and/or experience, and availability indicating a reasonable likelihood of success.

(v) 15–20 points will be awarded if all personnel demonstrate strong, relevant credentials or experience, and availability indicating a high likelihood of project success.

(c) *Commitments and Support (graduated score 0–10 points).*

Producer commitments to the project will be evaluated based on the number of independent producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as indicated by letters of intent or contracts from potential buyers referenced within the application. Other third-party commitments to the project will be evaluated based on the critical and tangible nature of their contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. All cash or in-kind contributions from producers, end users, or other contributors should be discussed. End-user commitments may include contracts or letters of intent or interest in purchasing the value-added product. Letters of commitment by producers, end-users, and third-parties should be summarized as part of your response to this criterion, and the letters should be included in Appendix B. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address the criterion.

(ii) 1–3 points will be awarded if you show real, direct support from at least one end-user or third-party contributor.

(iii) 4–6 points will be awarded if you, as the applicant, show strong financial commitment to the project AND measurable commitment or interest in purchasing the value-added product from at least one end-user; AND commitment or tangible support from at least one other third-party contributor.

(iv) 7–10 points will be awarded if you, as the applicant, show strong financial commitment to the project, AND participation from additional producers, AND measurable commitment or interest from multiple end-users, AND commitment or tangible support from multiple third-party contributors.

(d) *Work Plan and Budget (graduated score 0–20 points).*

You must submit a comprehensive work plan and budget (for full details, see 7 CFR 4284.922(b)(5)). Your work plan must provide specific and detailed descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs of project activities and allocate those costs among the listed tasks. You must show the source and use of both grant and matching funds for all tasks. Matching funds must be spent at a rate equal to, or in advance of, grant funds. An eligible start and end date for the project and for individual project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. Working capital applications must include an estimate of program income expected to be earned during the grant period (see 2 CFR 200.307).

Points will be awarded as follows:

(i) 0 points will be awarded if you do not substantively address the criterion.

(ii) 1–7 points will be awarded if the work plan and budget do not account for all project goals, tasks, costs, timelines, and responsible personnel.

(iii) 8–14 points will be awarded if you provide a clear, comprehensive work plan detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner that demonstrates a reasonable likelihood of success.

(iv) 15–20 points will be awarded if you provide a clear, comprehensive work plan detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner that demonstrates a high likelihood of success.

(e) *Priority Points up to 10 points (lump sum 0 or 5 points plus, graduated score 0–5 points).*

It is recommended that you use the Agency application package when applying for priority points and refer to the requirements specified in 7 CFR 4284.924. Priority points may be awarded in both the general funds and Reserved Funds competitions.

(i) 5 points will be awarded if you meet the requirements for one of the following categories and provide the documentation described in 7 CFR 4284.923 and 4284.924 as applicable: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, Operator of a Small or Medium-sized Farm or Ranch that is structured as a Family Farm, Farmer or Rancher Cooperative, or a Mid-Tier Value Chain project.

(ii) Up to 5 additional priority points will be awarded if you are an Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture (referred to below as ''applicant group'') whose project ''best contributes to creating or increasing marketing opportunities'' for Operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers (referred to below as ''priority groups'').

(A) 2 priority points will be awarded if the existing membership of the applicant group is comprised of either more than 75 percent of any one of the four priority groups or more than 75 percent of any combination of the four priority groups.

(B) 1 priority point will be awarded if the existing membership of the applicant group is comprised of two or more of the priority groups. One point is awarded regardless of whether a group's membership is comprised of two, three, or all four of the priority groups.

(C) 2 priority points will be awarded if the applicant's proposed project will increase the number of priority groups that comprise the applicant membership by one or more priority groups. However, if an applicant group's membership is already comprised of all four priority groups, such an applicant would not be eligible for points under this criterion because there is no opportunity to increase the number of priority groups. Note also that this criterion does not consider either the percentage of the existing membership that is comprised of the four priority groups or the number of priority groups currently comprising the applicant group's membership.

(f) *Priority Categories (graduated score 0–10 points).*

The Administrator of the Agency may choose to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

2. Review and Selection Process

The Agency will select applications for award under this Notice in accordance with the provisions specified in 7 CFR 4284.950(a).

If your application is eligible and complete, it will be qualitatively scored by at least two reviewers based on criteria specified in section E.1. of this Notice. One of these reviewers will be an experienced RD employee from your servicing State Office and at least one additional reviewer will be a non-Federal, independent reviewer, who must meet the following qualifications. Independent reviewers must have at least bachelor's degree in one or more of the following fields: Agri-business, agricultural economics, agriculture, animal science, business, marketing, economics or finance; and a minimum of 8 years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, or research; or as university faculty, trade association official or non-Federal government official in an agriculturally-related field). Each reviewer will score evaluation criteria (a) through (d) and the totals for each reviewer will be added together and averaged. The RD State Office reviewer will also assign priority points based on criterion (e) in section E.1. of this Notice. These will be added to the average score. The sum of these scores will be ranked highest to lowest and this will comprise the initial ranking.

The Administrator of the Agency may choose to award up to 10 Administrator priority points based on criterion (f) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 100.

A final ranking will be obtained based solely on the scores received for criteria (a) through (e). A minimum score of 50 points is required. Applications for Reserved Funds will be funded in rank order until funds are depleted. Unfunded reserve applications will be returned to the general funds where applications will be funded in rank order until the funds are expended. Funding for Majority Controlled Producer-Based Business Ventures is limited to 10 percent of total grant funds expected to be obligated as a result of this Notice. These applications will be funded in rank order until the funding limitation has been reached. Grants to these applicants from Reserved Funds will count against this funding limitation. In the event of tied scores, the Administrator shall have discretion in breaking ties.

If your application is ranked, but not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal mail, containing instructions on requirements necessary to proceed with execution and performance of the award.

If you are not selected for funding, you will be notified in writing via postal mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2015 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart J; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 400, 415, 417, 418, 421; 2 CFR parts 25 and 170; and 48 CFR 31.2, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). More information on these requirements can be found at *http://www.rd.usda.gov/programs-services/value-added-producer-grants.*

The following additional requirements apply to grantees selected for this program:

(a) Agency approved Grant Agreement.

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

(f) Form AD–1048, ''Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

(g) Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''

(h) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Must be signed by corporate applicants who receive an award under this Notice.

(i) Form RD 400–4, ''Assurance Agreement.''

(j) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(k) Use Form SF 270, ''Request for Advance or Reimbursement.''

3. Reporting

After grant approval and through grant completion, you will be required to provide the following, as indicated in the Grant Agreement:

(a) A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 45 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on March 31st and September 30th. The project performance reports shall include the elements prescribed in the grant agreement.

(b) A final project and financial status report within 90 days after the expiration or termination of the grant.

(c) Provide outcome project performance reports and final deliverables.

G. Agency Contacts

If you have questions about this Notice, please contact the State Office as identified in the **ADDRESSES** section of this Notice. You are also encouraged to visit the application Web site for application tools, including an application guide and templates. The Web site address is: *http://www.rd.usda.gov/programs-services/value-added-producer-grants.* You may also contact National Office staff: Tracey Kennedy, VAPG Program Lead, *tracey.kennedy@wdc.usda.gov,* or Shantelle Gordon, *shantelle.gordon@wdc.usda.gov,* or call the main line at 202–690–1374.

H. Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file an employment complaint, you must contact your agency's EEO Counselor (PDF) within 45 days of the date of the alleged discriminatory act, event, or in the case of a personnel action. Additional information can be found online at *http://www.ascr.usda.gov/complaint_filing_file.html.*

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: April 29, 2015.

Lillian Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2015–10440 Filed 5–7–15; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

[Docket No. 150324295–5295–01]

Privacy Act of 1974, New System of Records

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of a New Privacy Act System of Records; ''COMMERCE/DEPARTMENT–25, Access Control and Identity Management System.''

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Title 5 United States Code (U.S.C.) 552(e)(4) and (11); and Office of Management and Budget (OMB) Circular A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, the Department of Commerce is issuing this notice of its intent to establish a new system of records entitled ''COMMERCE/DEPARTMENT–25, Access Control and Identity Management System.'' This action is being taken to update the Privacy Act notice and Department of Commerce, Notice to Amend All Privacy Act System of Records. We invite the public to comment on the items noted in this publication. The purpose of this system of records is to establish identity, accountability, and audit control of electronic or other digital certificates of assigned personnel who require access to Department of Commerce electronic and physical assets. The records are created and maintained to provide assurance that the digital certificates/electronic access is granted to the correct individual, who typically has been issued an identification card by the Department of Commerce.

DATES: To be considered, written comments must be submitted on or before June 8, 2015.

Unless comments are received, the amended system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

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

Email: nschnare@doc.gov. Include ''Privacy Act COMMERCE/DEPARTMENT–25, Access Control and Identity Management System'' in the subtext of the message.

Fax: (202) 482–6089, marked to the attention of Mr. Nicholas Schnare.

Mail: Mr. Nicholas Schnare, Office of Security, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 1511, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Schnare, Office of Security, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 1511, Washington, DC 20230. (202) 482–8333.

SUPPLEMENTARY INFORMATION: This notice announces the Department of Commerce's proposal for a new system of records being established under the

Privacy Act of 1974 for Access Control and Identity Management System. This new system of records is to account for the electronic collection, maintenance and use of information in connection with access to Department of Commerce electronic and physical assets.

In a notice of proposed rulemaking, which is published separately in today's **Federal Register**, the Department of Commerce is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5).

The system will be effective as proposed, on the date of publication of a subsequent notice in the **Federal Register**, unless comments are received which would require a contrary determination. The Department of Commerce will publish a revised notice if changes are made based upon a review of the comments received.

COMMERCE/DEPT–25

SYSTEM NAME:

COMMERCE/DEPT–25 Access Control and Identity Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

a. For Office of Security, Office of the Secretary, U.S. Department of Commerce, Room 1033, 1401 Constitution Avenue NW., Washington, DC 20230.

b. For Office of Security, U.S. Census Bureau, Room 2J438, 4600 Silver Hill Road, Washington, DC 20233–3700.

c. For Office of Security, U.S. Census Bureau Indiana, Room 104, Building 66, 1201 E. 10th Street, Jeffersonville, IN 47132.

d. For Office of Security, National Institute of Standards and Technology, Room A–105, Building 318, 100 Bureau Drive, Gaithersburg, MD 20899.

e. For Office of Security, National Oceanic and Atmospheric Administration, Room G–101, SSMC–OFA543, 1335 East-West Highway, Silver Spring, MD 20910.

f. For Office of Security, National Oceanic and Atmospheric Administration, Western Region, Building 1, 7600 Sand Point Way NE., Seattle, WA 38115.

g. For Office of Security, FirstNet, John W. Powell Federal Building, 12201 Sunrise Valley, Drive, Reston, VA 22091.

h. For Office of Security, U.S. Patent and Trademark Office, 600 Dulany Street, Madison Building, West, Alexandria, Virginia 22313.

i. For Office of the Secretary, Minority Business Development Agency, Economic and Statistics Administration, and Economic Development Administration: Office of the Secretary, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

j. For U.S. Census Bureau, Chief Information Officer, 4600 Silver Hill Road, Suitland, MD 20746.

k. For Bureau of Industry and Security, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

l. For International Trade Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

m. For National Institute of Standards and Technology, Chief Information Officer, 100 Bureau Drive, Gaithersburg, MD 20899.

n. For National Telecommunications and Information Administration, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

o. For National Oceanic and Atmospheric Administration, Chief Information Officer, 1305 East-West Highway, SSMC3, Silver Spring, MD 20910.

p. For U.S. Patent and Trademark Office, Chief Information Officer, 600 Dulany Street, Madison Building, Alexandria, VA 22314.

q. For Office of Inspector General, Chief Information Officer, Chief Information Officer, 1401 Constitution Avenue NW., Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, and other affiliates requiring access to Department of Commerce electronic (including PKI-authenticated) and physical assets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the individual's name; organization; work telephone number; cellular telephone number; home telephone number, work email; Federal agency Smart Card Number (FASC–N); social security number; employee number; status as an employee, contractor or other affiliation with the Department of Commerce; PIN number (encrypted); sign-in/out, badge-in/out, time-in/out, log-in/out data; computer transaction data to include, but not limited to, key stroke monitoring; IP address of access; logs of internet activity and records on the authentication of the access request; key fob identifier; token identifier; Personal Identity Verification (PIV) Card identifier; computer access login name; and any computer generated identifier assigned to a user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 35 U.S.C. 2; the Electronic Signatures in Global and National Commerce Act, Public Law 106–229; 28 U.S.C. 533–535; 44 U.S.C. 1301; Homeland Security Presidential Directive 12 and IRS Publication-1075.

PURPOSES:

Records in this system are used by authorized personnel to improve security for Department of Commerce physical facilities for purposes including: Ensuring process integrity; enabling employees to carry out their lawful and authorized responsibilities; verifying individuals' authorization to access buildings and facilities; creating a record of individuals' access to buildings and facilities; facilitating the issuance and retrieval of visitor and temporary badges; and providing statistical data on building and facility access patterns including electronic and physical sign/badge-in and sign/badge-out data for resource planning and emergency management purposes.

Records may also be used to secure electronic assets; to maintain accountability for issuance and disposition of security access; to maintain an electronic system to facilitate secure on-line communication between Federal automated systems, between Federal employees or contractors, and with the public, using digital signature technologies to authenticate and verify identity; to provide a means of access to electronic assets, desktops, and laptops; and to provide mechanisms for non-repudiation of personal identification and access to electronic systems, including but not limited to human resource, financial, procurement, travel and property systems, as well as systems containing information on intellectual property and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Records in this system are accessed on a daily basis by authorized personnel to verify individuals' authorized access to buildings and facilities; electronic systems and computers; facilitate the issuance and retrieval of visitor and temporary badges; determine whether administrative action (including disciplinary action) should be taken regarding any employee, contractor, or

visitor; and provide statistical data on computer information systems, building and facility access patterns including electronic and physical sign/badge-in and sign/badge-out data for resource planning, emergency management purposes, assuring the security of computer information systems, and implementing Executive Order 13587.

2. In the event that a system of records maintained by the Department to carry out its functions indicates or relates to a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or where necessary to protect an interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

3. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

6. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

7. A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by the General Services Administration as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

12. A record in this system of records may be disclosed to appropriate agencies, entities and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the DOC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the DOC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DOC's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

13. A record in this system of records may be disclosed to appropriate agencies, entities and persons for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Paper records are stored in secure rooms and storage cabinets and electronic records are stored as electronic/digital media and stored in secure file-servers within controlled environment. Both paper and electronic/digital records are accessed only by authorized personnel.

RETRIEVABILITY:

Records are retrieved by individual's name, employment status, organization and/or security access badge number, or other Department of Commerce identifier. Information may be retrieved from this system of records by automated search based on extant indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification cards are verified to ensure that records are in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Disclosure of electronic information through remote terminals is restricted through the use of passwords and sign-on protocols that are periodically changed. Reports produced from the remote printers are subject to the same privacy controls as other documents of like sensitivity.

Electronic and digital certificates ensure secure local and remote access and allow only authorized employees, contractor employees, or other affiliated individuals to gain access to federal information assets available through secured systems access.

Access to sensitive records is available only to authorized employees and contractor employees responsible for the management of the system and/or employees of program offices who have a need for such information. Electronic records are password-protected or PKI-protected, consistent with the requirements of the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology, and the General Services Administration, all records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Access is restricted on a ''need to know'' basis, utilization of PIV Card access, secure VPN for Web access, and locks on doors and approved storage containers. Buildings have security guards and secured doors. Entrances are monitored through electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the appropriate records disposition schedule approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

System managers are the same as stated in the System Location section above.

NOTIFICATION PROCEDURE:

An individual requesting notification of existence of records on himself or herself should send a signed, written inquiry to the locations listed below. The request letter should be clearly marked, ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should reasonably specify the record contents being sought.

For records at locations a., g., and i.: Departmental Freedom of Information and Privacy Act Officer, Room A300, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at locations b., c., and j.: U.S. Census Bureau, Freedom of Information and Privacy Act Officer, Room 8H027, 4600 Silver Hill Road, Washington, DC 20233–3700.

For records at locations d. and m.: National Institute of Standards and Technology, Freedom of Information and Privacy Act Officer, Room 1710, 100 Bureau Drive, Gaithersburg, MD 20899.

For records at locations e., f., and o.: National Oceanic and Atmospheric Administration, Freedom of Information and Privacy Act Officer, Room 9719, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910.

For records at locations h.and p.: U.S. Patent and Trademark Office, Freedom of Information and Privacy Act Officer, 600 Dulany Street, Madison Building, East, Room 10B20, Alexandria, Virginia 22313.

For records at location k.: Bureau of Industry and Security, Freedom of Information and Privacy Act Officer, Room 6622, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location l.: International Trade Administration, Freedom of Information and Privacy Act Officer, Room 40003, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location n.: National Telecommunications and Information Administration, Freedom of Information and Privacy Act Officer, Room 4713, 1401 Constitution Avenue NW., Washington, DC 20230.

For records at location q.: Office of Inspector General, Freedom of Information and Privacy Act Officer, Room 7892, 1401 Constitution Avenue NW., Washington, DC 20230.

RECORD ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the same address as stated in the Notification Procedure section above. The request letter should be clearly marked, ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request inquiry to the same address as stated in the Notification Procedure section above. Requesters should reasonable identify the records, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant.

The Department's rules for access, for contesting contents, and for appealing initial determination by the individual concerned appear in 15 CFR part 4, Appendix B.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by: The subject individual of the record, supervisors, other personnel documents, other Department systems, access log records and sensors and non-Federal sources such as private employers and their agents, along with those authorized by the individuals to furnish information.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5), all information and material in the record which meets the criteria of these subsections are exempted from the notice, access, and contest requirements under 5 U.S.C. 552a(c)3, (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 12958, as amended by Executive Order 13292, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel. In a notice of proposed rulemaking, which is published separately in today's **Federal Register**, the Department of Commerce is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5).

Dated: April 28, 2015.

Brenda Dolan,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2015–10452 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–28–2015]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Notification of Proposed Production Activity; Outokumpu Stainless USA, LLC (Stainless Steel Products); Calvert, Alabama

The City of Mobile, grantee of FTZ 82, submitted a notification of proposed production activity to the FTZ Board on behalf of Outokumpu Stainless USA, LLC (Outokumpu), located in Calvert, Alabama. The notification conforming to the requirements of the regulations of

the FTZ Board (15 CFR 400.22) was received on April 21, 2015.

The Outokumpu facility is located within Subzone 82I. The facility is used for the production of stainless steel mill products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Outokumpu from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, Outokumpu would be able to choose the duty rates during customs entry procedures that apply to: Granulated slag (slag sand); slag, dross and scalings; stainless steel in ingots and other primary forms; hot-rolled stainless steel coils; hot-rolled stainless steel not in coils; cold-rolled stainless steel not in coils; and, stainless steel sheets and plates (duty-free) for the foreign status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials/components sourced from abroad include: Fluorspar containing by weight 97% or less of calcium fluoride; ferromanganese containing by weight more than 1% but less than 2% of carbon; ferromanganese containing by weight not more than 1% of carbon; ferrosilicon containing by weight more than 80% but not more than 90% silicon; ferrosilicon containing by weight more than 90% silicon; ferrochromium; ferronickel; ferro-niobium; ferro-boron; copper waste and scrap; unwrought nickel; unwrought nickel alloys; unwrought aluminum (other than alloy); unwrought molybdenum, including bars and rods obtained by simple sintering; unwrought titanium in rock or powder form; titanium castings; and, titanium in bars, rods, profiles and wires (duty rate ranges from duty-free to 15%). The request indicates that ferrosilicon may be subject to an antidumping/countervailing duty (AD/CVD) order. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD actions be admitted to the zone in privileged foreign status (19 CFR 146.41). In addition, the request indicates that all foreign status ferrosilicon, molybdenum and titanium classified under HTSUS Subheadings 7202.21, 8102.94, 8108.20 and 8108.90 will be admitted to the subzone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 17, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 30, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11220 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2015]

Foreign-Trade Zone 82—Mobile, Alabama; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Mobile, grantee of FTZ 82, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 1, 2015.

FTZ 82 was approved by the FTZ Board on February 24, 1982 (Board Order 208, 48 FR 9052, 3/3/1983) and expanded on February 27, 1990 (Board Order 464, 55 FR 8159, 3/7/1990) and on December 19, 2003 (Board Order 1312, 69 FR 48, 1/2/2004).

The current zone includes the following sites: *Site 1* (1,863 acres)—Downtown Mobile Airport, Port and Riverfront Industrial Complex, Mobile; *Site 2* (3,169 acres)—LeMoyne Industrial Park, located on U.S. Highway 43, LeMoyne; *Site 3* (70 acres)—Mobile River Industrial Park, located on U.S. Highway 43, Saraland; *Site 4* (34 acres)—Frisco Industrial Park, located on Craft Highway, Mobile and Prichard; *Site 7* (3,364 acres)—Theodore Industrial Complex, located on the western shore of Mobile Bay, Theodore; *Site 9* (221 acres)—Loxley Industrial Park, located near County Highway 49, Loxley; *Site 13* (31 acres, expires 4/30/2016)—warehouse complex, 1200 Papermill Road, Mobile; *Site 14* (6 acres, expires 4/30/2016)—Metro International Trade Services, 6955 Cary Hamilton Road, Theodore; *Site 15* (15 acres, expires 4/30/2016)—Metro International Trade Services, 200 Callahan Drive, 1501 Telegraph Road and 1816/1818 Craft Highway, Prichard; *Site 16* (3 acres, expires 4/30/2016)—Metro International Trade Services, 1510 Telegraph Road, Mobile; *Site 17* (6 acres, expires 4/30/2016)—Metro International Trade Services, 1204 Telegraph Road, Mobile; *Site 18* (10 acres, expires 4/30/2016)—John Fayard Moving & Warehousing, L.L.C., warehouse complex, 6030 Rangeline Road, Theodore; and, *Site 19* (4 acres, expires 4/30/2016)—Technip UK, Ltd., 3405/3425 Hurricane Bay Drive, Theodore. (Note: Sites 5, 6, 8, 10, 11 and 12 have sunsetted pursuant to Board Order 1312.)

The grantee's proposed service area under the ASF would be the Counties of Mobile, Baldwin, Butler, Choctaw, Clarke, Conecuh, Escambia, Monroe, Washington and Wilcox, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Mobile Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone as follows: Restore 80 acres at Site 1 (new acreage—1,943 acres); Sites 1 (as modified), 2, 3, 4, 7, 9, 13 and 18 would become ''magnet'' sites; and, Sites 14, 15, 16, 17 and 19 would become ''usage-driven'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that modified Site 1 be so exempted. The application would have no impact on FTZ 82's previously authorized subzones.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 7, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 22, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 2, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11221 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2015]

Foreign-Trade Zone (FTZ) 148—Knoxville, Tennessee; Notification of Proposed Production Activity; CoLinx, LLC (Bearing Units); Crossville, Tennessee

The Industrial Development Board of Blount County and the Cities of Alcoa and Maryville, Tennessee, grantee of FTZ 148, submitted a notification of proposed production activity to the FTZ Board on behalf of CoLinx, LLC (CoLinx), located in Crossville, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 29, 2015.

The CoLinx facilities are located within Sites 2, 6 and 7 of FTZ 148. The facilities are used for the distribution and assembly of kits of bearing products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CoLinx from customs duty payments on the foreign status components used in export production. On its domestic sales, CoLinx would be able to choose the duty rates during customs entry procedures that apply to: Mounted unit roller assemblies (housed, spherical roller bearing units); and, mounted unit ball assemblies (housed ball bearing units) (duty rate 4.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Mineral oil based, lithium soap thickened bearing grease; double row insert bearings (spherical rollers), nitrile rubber contact lip seals with spring-loaded lips; and, plastic end caps for bearing housings (duty rate ranges from 2.5% to 1.3¢/kg + 5.7%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 17, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 30, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–11219 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Education Trade Mission to Africa, March 7–10, 2016

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is organizing an education mission to South Africa and Ghana with an optional stop in the Côte d'Ivoire. Department of Commerce is partnering with the Department of State's EducationUSA Advising Centers in each location. This trade mission will be led by a senior Department of Commerce official and the emphasis will be on higher education programs, community college programs and summer, undergraduate and graduate programs.

This mission will seek to connect U.S. higher education institutions to potential students and university/institution partners in these three African countries. The mission will include student fairs organized by Education USA, embassy briefings, site visits, and networking events in our target cities of Johannesburg, Accra, and Abidjan. Participation in the Education Mission to these nations, rather than traveling independently to each market, will enhance the ability of participants to secure appropriate meetings with productive contacts in the target markets.

Summer programs seeking to participate should be appropriately accredited by an accreditation body recognized by the U.S. Department of Education. Community colleges, undergraduate and graduate programs seeking to participate should be accredited by a recognized accreditation body listed in Council for Higher Education Accreditation (CHEA) or Accrediting Council for Education and Training (ACCET), in the Association of Specialized and Professional Accreditors (ASPA), or any accrediting body recognized by the U.S. Department of Education.

The delegation will include representatives from approximately 25 different educational institutions.

Mission Goals

The goals of the United States Education Mission to Africa are: (1) To help participants gain market exposure and to introduce participants to the vibrant African market in the countries of South Africa, Ghana, and Côte d'Ivoire (2) to help participants assess current and future business prospects by establishing valuable contacts with prospective students and educational institutions/partners; and (3) to help participants develop market knowledge and relationships leading to student recruitment and potential partnerships.

Proposed Mission Schedule—March 6 to 12, 2016

Johannesburg, South Africa—March 6–8, 2016

Sunday, March 6, 2016 Johannesburg

- Arrive in Johannesburg.
- Check into hotel.

Monday, March 7, 2016 Johannesburg

- Welcome and Briefing from the U.S. and Foreign Commercial Service.
- Visit to Oprah Winfrey's Leadership Academy.
- Visit to schools.
- Networking reception.

Tuesday, March 8, 2016 Johannesburg.

- Additional visits to schools.
- Education Fair.
- Travel to Accra, Ghana.

Accra, Ghana—Wednesday, March 9–10, 2016

Wednesday, March 9, 2016 Accra

- Travel recovery.
- Welcome and briefing from the U.S. and Foreign Commercial Service.
- Visits to schools.
- Reception at the U.S. Ambassador's residence.

Thursday, March 10, 2016 Accra

- Education Fair.
- Depart to Abidjan, Côte d'Ivoire for optional stop or return to the United States on own itinerary.

Official Trade Mission Ends

Abidjan, Cote d'Ivoire (OPTIONAL)

Friday, March 11, 2016 Abidjan

Welcome and briefing from the U.S. Department of State (EducationUSA)

- Visits to schools.
- Education Fair.
- Reception.

Saturday, March 12, 2016

- Departure to the USA.

Participation Requirements

All parties interested in participating in the Education Trade Mission to Africa must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission will open on a rolling basis to a minimum of 20 and a maximum of 25 appropriately accredited U.S. educational institutions. U.S. educational institutions already recruiting in Africa, as well as U.S. education institutions seeking to enter the African market for the first time, may apply.

Fees and Expenses

After an institution has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is $2,800 for one principal representative from each non-profit educational institution or educational institution with less than 500 employees and $3,300 for for-profit universities with over 500 employees.[1] An institution can choose to participate in the optional stop in Cote d'Ivoire for an additional $1,800 for one principal representative from each non-profit educational institution or educational institution with less than 500 employees and $1,900 for for-profit universities with over 500 employees. The fee for each additional representative is $600. Expenses for lodging, some meals, incidentals, and all travel (except for transportation to and from airports in-country, previously noted) will be the responsibility of each mission participant. The U.S. Department of Commerce can facilitate government rates in some hotels.

Conditions of Participation

An applicant must submit a timely, completed and signed mission application and supplemental application materials, including adequate information on course offerings, primary market objectives, and goals for participation. The institution must have appropriate accreditation as specified per paragraph one above. The institution must be represented at the student fair by an employee. No agents will be allowed to represent a school on the mission or participate at the student fair. Agents will also not be allowed into the fairs to solicit new partnerships. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Participants must travel to both stops in South Africa and Ghana on the mission. Côte d'Ivoire is the only optional stop.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. Non-profit educational institutions will be considered SMEs for purposes of this guidance. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Each applicant must certify that the services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the service.

Selection Criteria for Participation

- Consistency of the applicant's goals and objectives with the stated scope of the mission.
- Applicant's potential for doing business in Africa, including the likelihood of service exports (education)/knowledge transfer resulting from the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and will not be considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/industry/education/*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 15, 2016. Applications for the mission will be accepted on a rolling basis. Applications received after January 15, 2016, will be considered only if space and scheduling constraints permit.

Contacts

CS Portland, Jennifer Woods, Senior International Trade Specialist, U.S. Commercial Service Portland, 503–326–5290, *jennifer.woods@trade.gov*

CS Ft. Lauderdale, Tyler Hacking, Commercial Officer, U.S. Commercial Service Ft. Lauderdale, 954–356–6645, *tyler.hacking@trade.gov*

CS South Africa (Johannesburg), Mike Calvert, Commercial Officer, U.S. Commercial Service South Africa (Johannesburg), (+27) 11 290–3062, *mike.calvert@trade.gov*

Sanjay Harryparshard, U.S. Commercial Service South Africa (Johannesburg), *harryparshardS@state.gov*

CS Ghana, Joseph Snapp, Commercial Specialist, U.S. Commercial Service Ghana, +233 (0) 30 274 1329, *Joseph.snapp@trade.gov*

Paul Taylor, Senior Commercial Officer, U.S. Commercial Service Ghana, +233–302–741–086, *paul.taylor@trade.gov*

Côte d'Ivoire, Nina Toyo, EducationUSA Advisor, U.S. Embassy Abidjan, (225) 22 49 41 45, *toyoNR@state.gov*

Frank Spector,

Trade Promotion Programs.

[FR Doc. 2015–11070 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–FR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

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

DATES: *Effective Date:* May 8, 2015.

SUMMARY: On January 30, 2015, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC''), covering the period May 1, 2013, through April 31, 2014.[1] This review covers one PRC exporter, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal, Co., Ltd. (''TMM'') (collectively ''TMI/TMM''). The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but we received no comments. Hence, these final results are unchanged from the *Preliminary Results,* and we continue to find that TMI/TMM did not have reviewable entries during the period of review (''POR'').

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Erin Begnal, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2015, the Department published the *Preliminary Results* of the instant review.[2] TMI/TMM submitted timely-filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR.[3] In addition, in response to the Department's query, U.S. Customs and Border Protection (''CBP'') did not provide any evidence that contradicted TMI/TMM's claims of no shipments.[4] The Department received no comments from interested parties concerning the results of the CBP query. Therefore, based on TMI/TMM's certification and our analysis of CBP information, we preliminarily determined that TMI/TMM did not have any reviewable entries during the POR.[5] We invited interested parties to comment on the *Preliminary Results.*[6] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Determination of No Shipments

As explained above, in the *Preliminary Results,* the Department found that TMI/TMM did not have reviewable entries during the POR.[7]

After issuing the *Preliminary Results,* the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary results. Therefore, for these final results, the Department continues to find that TMI/TMM did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[8] The Department intends to issue assessment instructions to CBP 15 days after the

[1] *See Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 5087 (January 30, 2015) (''*Preliminary Results*'').

[2] *Id.*

[3] *See* letter from TMM, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 23, 2014; *see also* letter from TMI, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated July 22, 2014.

[4] *See Preliminary Results,* 80 FR at 5088.

[5] *Id.*

[6] *Id.*

[7] *See Preliminary Results,* 80 FR at 5088.

[8] *See* 19 CFR 351.212(b).

date of publication of these final results of review.

Additionally, consistent with the Department's refinement to its assessment practice in NME cases, because the Department determined that TMI/TMM had no shipments of subject merchandise during the POR, any suspended entries that entered under TMI/TMM's antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; [10] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement''*).

[10] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

Administrative Protective Order

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 terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 24, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–11217 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 150428402–5402–01]

Call for Applications for the International Buyer Program Select Service for Calendar Year 2016

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications.

SUMMARY: The U.S. Department of Commerce (DOC) announces that it will begin accepting applications for the International Buyer Program (IBP) Select service for calendar year 2016 (January 1, 2016 through December 31, 2016). This announcement sets out the objectives, procedures and application review criteria for IBP Select. Under IBP Select, the International Trade Administration (ITA) recruits international buyers to U.S. trade shows to meet with U.S. suppliers exhibiting at those shows. The main difference between IBP and IBP Select is that IBP offers worldwide promotion, whereas IBP Select focuses on promotion and recruitment in up to five international markets. Specifically, through the IBP Select, the DOC selects domestic trade shows that will receive DOC assistance in the form of targeted promotion and recruitment in up to five foreign markets, export counseling to exhibitors, and export counseling and matchmaking services at the trade show. This notice covers selection for IBP Select participation during calendar year 2016.

DATES: Applications for IBP Select must be received by June 22, 2015.

ADDRESSES: Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800—Mezzanine Level—Atrium North, Washington, DC 20004; (2) Facsimile: (202) 482–7800; or (3) email: *IBP2016@trade.gov.* Facsimile and email applications will be accepted as interim applications, and must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting Director, International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–2311; Facsimile: (202) 482–7800; Email: *IBP2016@trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP Select will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, the DOC selects trade shows that DOC determines to be leading trade shows with participation by U.S. firms interested in exporting. DOC provides successful applicants with assistance in the form of targeted overseas promotion of the show by U.S. Embassies and Consulates; outreach to show participants about exporting;

recruitment of potential buyers to attend the events; and staff assistance in setting up and staffing international trade centers at the events. Targeted promotion in up to five markets can be executed through the overseas offices of ITA or in U.S. Embassies in countries where ITA does not maintain offices.

ITA is accepting applications for IBP Select from trade show organizers of trade events taking place between January 1, 2016 and December 31, 2016. Selection of a trade show for IBP Select is valid for one event. A trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

There is no fee required to submit an application. For IBP Select in calendar year 2016, ITA expects to select approximately 6 events from among the applicants. ITA will select those events that are determined to most clearly support the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Once selected, applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC, and submit payment of the $6,000 2016 participation fee within 30 days of written notification of acceptance into IBP Select. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP Select and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application form and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely, as IBP Select participants are expected to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. The responsibilities to be undertaken by the DOC will be carried out by ITA. ITA responsibilities include targeted promotion of the trade show and, where feasible, recruitment of international buyers to that show from up to five target markets identified, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP Select show does not constitute a guarantee by DOC of the show's success. IBP Select participation status is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for IBP Select status should be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: 2016 U.S. trade events, through the show organizer, with 1,350 or fewer exhibitors are eligible to apply for IBP Select participation. First-time events will also be considered.

Exclusions: U.S. trade shows with over 1,350 exhibitors will not be considered for IBP Select.

General Evaluation Criteria: ITA will evaluate applicants for IBP Select participants using the following criteria:

(a) Export Potential: The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists, and U.S. export analysis.

(b) Level of International Interest: The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator.

(c) Scope of the Show: The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(d) U.S. Content of Show Exhibitors: Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) Stature of the Show: The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) Level of Exhibitor Interest: There is significant interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand their sales into additional export markets.

(g) Level of Overseas Marketing: There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance.

(h) Level of Cooperation: The applicant demonstrates a willingness to cooperate with ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(i) Delegation Incentives: Waived or reduced (by at least 50%) admission fees are required for international attendees who are participating in IBP Select. Delegation leaders also must be provided complimentary admission to the event. In addition, show organizers should offer a range of incentives to delegations and/or delegation leaders recruited by the DOC overseas posts. Examples of incentives to international visitors and to organized delegations include: Special organized events, such as receptions, meetings with association executives, briefings, and site tours; or complimentary accommodations for delegation leaders.

Review Process: ITA will vet all applications received based on the criteria set out in this notice. Vetting will include soliciting input from ITA industry analysts, as well as domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider sector and calendar diversity in terms of the need to allocate resources to support selected events.

Application Requirements: Show organizers submitting applications for 2016 IBP Select are required to submit: (1) A narrative statement addressing each question in the application, OMB 0625–0151 (found at *www.export.gov/ibp*); and (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the International Buyer Program Select (January 1, 2016 through December 31, 2016);'' on or before the deadline noted above. There is no fee required to apply. ITA expects to issue the results of this process in August 2015.

Legal Authority: The statutory program authority for ITA to conduct the IBP is 15 U.S.C. 4724. ITA has the legal authority to enter into MOAs with

show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (0625–0151) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Acting Director, International Buyer Program (*IBP2016@trade.gov*).

Frank Spector,

Trade Promotion Programs.

[FR Doc. 2015–11053 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Restoration Center Performance Progress Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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. The draft revised information collection form and guidance not yet approved by OMB can be reviewed at *http://www.habitat.noaa.gov/restoration/programs/crp.html.*

DATES: Written comments must be submitted on or before July 7, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Julia Royster, Office of Habitat Conservation, Restoration Center, 1315 East-West Highway, Silver Spring, 20910, (301) 427–8686, or *Julia.Royster@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a currently approved information collection.

The NOAA Restoration Center (NOAA RC) provides technical and financial assistance to identify, develop, implement, and evaluate community-driven habitat restoration projects. Awards are made as grants or cooperative agreements under the authority of the Magnuson-Stevens Fishery Conservation and Management Act of 2006, 16 U.S.C. 1891a and the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970.

The NOAA RC requires specific information on habitat restoration projects that we fund, as part of routine progress reporting. Recipients of NOAA RC funds submit information such as project location, restoration techniques used, species benefited, acres restored, stream miles opened to access for diadromous fish, volunteer participation, and other parameters.

The required information enables NOAA to track, evaluate and report on coastal and marine habitat restoration and demonstrate accountability for federal funds. This information is used to populate a database of NOAA RC-funded habitat restoration. The database, with its robust querying capabilities, is instrumental to provide accurate and timely responses to NOAA, Department of Commerce, Congressional and constituent inquiries. It also facilitates reporting by NOAA on the Government Performance and Results Act ''acres restored'' performance measure. Grant recipients are required by the NOAA Grants Management Division to submit periodic performance reports and a final report for each award; this collection stipulates the information to be provided in these reports.

Since the last extension of this collection approved by OMB, the database used to track and report on restoration projects has been updated and redesigned. The NOAA RC is revising and streamlining the progress report form to ensure it aligns with the updated database and collects only the information we need to effectively track, evaluate, and report on restoration projects completed with federal funds. The NOAA RC has also divided the information collected into two forms for simplicity. The Performance Report Form focuses on tracking project implementation, milestones, performance measures, monitoring, and expenditures. The Administrative Form only applies to recipients with an award that will implement multiple projects. It collects information on the administration of the award, the number of projects supported by the award, and award expenditures.

II. Method of Collection

NOAA's preferred method of collection is submission of electronic fillable forms attached to an award file in Grants Online, NOAA's award management system. If the recipient does not have electronic access to submit the form, mailed paper forms will be accepted.

III. Data

OMB Control Number: 0648–0472.

Form Number(s): None.

Type of Review: Regular (revision and extension of currently approved information collection).

Affected Public: Not-for-profit institutions; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 130.

Estimated Time per Response: Performance Interim reports, 4 hours, 30 minutes; final reports, 7 hours, 45 minutes and Administrative Interim reports, 4 hours; final reports, 7 hours.

Estimated Total Annual Burden Hours: 3,475.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11046 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD938

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 joint public meeting of its Monkfish Committee and Advisory Panel 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, May 26, 2015 at 9 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

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 Monkfish Committee and Advisory Panel will meet to review Plan Development Team work on alternatives under consideration and impacts of these alternatives in Framework Adjustment 9 and select preferred alternatives. The Committee and Advisory Panel will also 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: May 5, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–11119 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD936

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold the Second Meeting of its Protected Species Advisory Committee (PSAC) in Honolulu, HI. The PSAC will receive updates on fishery management actions and protected species activities, review protected species interactions in the Hawaii longline fishery, discuss monitoring of Fishery Ecosystem Plans (FEP) through annual reports, and review the Council's research priorities related to protected species. The PSAC may make recommendations on these topics.

DATES: The PSAC meeting will be held between 9 a.m. and 5 p.m. on May 27–28, 2015.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment opportunity will be provided. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Agenda:

9 a.m., Wednesday, May 27, 2015

1. Welcome and Introductions
2. Approval of Agenda
3. Status of the First Protected Species Advisory Committee Meeting Recommendations
4. Fishery Management Updates
   - A. Recent Council Actions
     - i. American Samoa Large Vessel Prohibited Area Temporary Exemption
     - ii. Other Pelagic Fisheries Actions
     - iii. Insular Fisheries Actions
     - iv. Discussion
   - B. Endangered Species Act (ESA) Section 7 Consultations
     - i. Overview of Section 7 Consultations
     - ii. Biological Opinion for the Hawaii Deep-set Longline Fishery and Related Marine Mammal Protection Act Permit
     - iii. Consultation for the American Samoa Longline Fishery
     - iv. Consultations on Corals and Scalloped Hammerhead Shark
     - v. Discussion
5. Protected Species Updates
   - A. Council Protected Species Activities Update
   - B. NMFS Protected Species Activities Update
   - C. Green Turtle Status Review and Proposed Rule
   - D. Humpback Whale Status Review and Proposed Rule
   - E. Discussion
6. Review of Protected Species Interactions in the Hawaii Longline Fishery
   - A. Overview of Protected Species Interactions
   - B. Fishing Effort and Spatial Trends
   - C. Sea Turtle Interactions
     - i. Observed and Expanded Interactions
     - ii. Sea Turtle Abundance Trends
     - iii. ESA Consultation Analyses
     - iv. Discussion
   - D. Seabird Interactions
     - i. Observed and Expanded Interactions
     - ii. Albatross Abundance Trends
     - iii. Ongoing Research to Assess Seabird Catch Rates
     - iv. Discussion
   - E. Discussion on Interaction Trends and Analysis Needs
7. Public Comment

9 a.m., Thursday, May 28, 2015

8. Monitoring the Fishery Ecosystem Plans (FEP) through Annual Reports

A. Annual Report Outline and Review Schedules
B. Considerations for Monitoring Protected Species Interactions
C. Statistical Control Chart Approach for Monitoring Protected Species Interactions
D. Discussion on Effective Monitoring of Protected Species under the FEP Annual Reports
9. Council's Research Priorities
A. Five-year Research Priorities
B. Cooperative Research Priorities
C. Discussion
10. Public Comment
11. Committee Discussion and Recommendations
12. Other Business & Next Meeting

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 5, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–11117 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD937

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a joint meeting of its Special Coral Scientific and Statistical Committee (SSC) and Coral Advisory Panel (AP).

DATES: The meeting will convene on Wednesday, May 27, 2015, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council's office, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Morgan Kilgour, Ph.D., Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *morgan.kilgour@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Joint Special Coral Scientific and Statistical Committee (SSC) and Coral Advisory Panel (AP) Meeting Agenda, Wednesday, May 27, 2015, 8:30 a.m. Until 4:30 p.m.

I. Election of Coral Advisory Panel (AP) chair
II. Adoption of the Agenda
III. Approval of Minutes From the April 24, 2014, Joint Coral SSC/AP Meeting
IV. Council Charge—''to determine the criteria and boundaries, and other specifics for potential sites, and once that has been determined, that this group meet with representatives of any potentially impacted fisheries and members of law enforcement.''
V. Plan of Work
VI. Review Report From the Coral Working Group
a. Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion Update
b. Pulley Ridge Proposed Boundary Expansion Update
VII. Discuss Individual Sites Identified by the Coral Working Group
a. Review and Discuss Information
b. Evaluate Appropriate Boundaries or Areas
c. Make Recommendations on Appropriate Areas
d. Potential Fishery Interactions
VIII. Other Business
a. Discuss Timeline for Next Steps
Adjourn

This agenda may be modified as necessary to facilitate the discussion of pertinent materials up to and during the scheduled meeting.

For meeting materials see folder ''Joint Special Coral SSC and Coral AP Meeting—2015–05'' on Gulf Council file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. The meeting will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working 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: May 5, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–11118 Filed 5–7–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socioeconomic Survey—Manell-Geus (Guam)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before July 7, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Peter Edwards, (301) 563–1145 Ext 145 or at *Peter.Edwards@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection. The purpose of this

information collection is to obtain information from individuals in Merizo, Guam. Specifically, NOAA is seeking information on the knowledge, attitudes and perceptions of watershed and coral reef conditions, as well as information on knowledge and attitudes related to specific reef protection activities in the Manell-Geus watershed and adjacent waters. In addition, this survey will provide for the ongoing collection of social and economic data related to the communities affected by coral reef conservation programs.

Manell-Geus is one of ten sites in the nation selected as a focus area for NOAA's Habitat Blueprint initiative. Community support and engagement are key elements towards successfully building resilience. We intend to use the information collected through this instrument for research purposes as well as measuring and improving the results of our coral reef protection programs. Because many of our efforts to protect reefs rely on education and changing attitudes toward reef protection, the information collected will allow NOAA staff to ensure programs are designed appropriately at the start, future program evaluation efforts are as successful as possible, and outreach efforts are targeting the intended recipients with useful information.

II. Method of Collection

Information will be collected using a combination of approaches namely household surveys, focus groups, and key informant interviews. The combination of these approaches is the most efficient and effective way to collect this kind of information at the village level for this U.S. jurisdiction.

III. Data

OMB Control Number: 0648–xxxx.
Form Number: NA.
Type of Review: Regular submission (request for a new information collection).
Affected Public: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Time per Response: 25 minutes.
Estimated Total Annual Burden Hours: 167.
Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sarah Brabson,
NOAA PRA Clearance Officer.
[FR Doc. 2015–11206 Filed 5–7–15; 8:45 am]
BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket ID PTO–C–2015–0017]

Title: National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office, Commerce.
ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Tuesday, May 19, 2015. The primary purpose of the meeting is to discuss the relative merits of persons, teams, and companies nominated for the 2013 and 2014 NMTI. The Committee will consider nominations from both years in order to expedite the awards process.

DATES: The meeting will convene Tuesday, May 19, 2015, at approximately 9 a.m., and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313; telephone (571) 272–9821; or by electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, chartered to the United States Department of Commerce, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The Secretary of Commerce is responsible for recommending to the President prospective NMTI recipients. The NMTI Nomination Evaluation Committee evaluates the nominations received pursuant to public solicitation and makes its recommendations for the Medal to the Secretary. Committee members are distinguished experts in the fields of science, technology, business, and patent law drawn from both the public and private sectors and are appointed by the Secretary for three-year terms.

The NMTI Nomination Evaluation Committee was established in accordance with the FACA. The Committee meeting will be closed to the public in accordance with the FACA and 5 U.S.C. 552b(c)(6) and (9)(B), because the discussion of the relative merit of the Medal nominations is likely to disclose information of a personal nature..

The Chief Financial Officer and Assistant Secretary for Administration, United States Department of Commerce, formally determined on April 16, 2015 pursuant to Section 10(d) of the FACA, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6) and (9)(B). Due to closure of this meeting, copies of any minutes of the meeting will not be available. A copy of the determination is available for public inspection at the United States Patent and Trademark Office.

Dated: May 3, 2015.

Michelle K. Lee,
Deputy Under Secretary of Commerce for Intellectual Property andDeputy Director of the United States Patent and Trademark Office.
[FR Doc. 2015–11010 Filed 5–7–15; 8:45 am]
BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be

furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 6/8/2015.

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

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/30/2015 (80 FR 5092–5093), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

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

End of Certification

Accordingly, the following products are added to the Procurement List:

Products:

Product Name/NSN(s): Bold Ballpoint Pen, SKILCRAFT, 1.4mm with Clip, Cushion Grip
7520–00–NIB–1969—Black Ink, Refillable
7520–00–NIB–1970—Blue Ink, Refillable
7520–00–NIB–1971—Red Ink, Refillable
Mandatory Purchase For: Total Government Requirement
Mandatory Source of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: General Services Administration
Distribution: A-List

Product Name/NSN(s): Plastic Point Stick Permanent Water Resistant Pens
7520–00–NIB–2284—Fine Point, Black Ink
7520–00–NIB–2285—Fine Point, Blue Ink
7520–00–NIB–2286—Fine Point, Red Ink
7520–00–NIB–2289—Medium Point, Black Ink
Distribution: A-List
7520–00–NIB–2290—Medium Point, Blue Ink
7520–00–NIB–2291—Medium Point, Red Ink
Distribution: B-List
Mandatory Purchase For: Total and Broad Government Requirement
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: General Services Administration

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–11129 Filed 5–7–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from the Procurement List.

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

DATES: *Comments must be received on or before:* June 8, 2015.

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

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

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

Additions

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

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

Product

Product Name/NSN(s): 9V Alkaline Non-rechargeable Battery/6135–00–900–2139
Mandatory Purchase For: Total Government Requirement
Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH
Distribution: A-List

Service

Service Type: Furniture Design and Configuration Service
Service Is Mandatory For: New Hampshire National Guard
Mandatory Source of Supply: Industries for the Blind Inc., West Allis, WI
Contracting Activity: United States Property and Fiscal Office (USPFO), New Hampshire National Guard, Pease ANGB, NH

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

Product Name/NSN(s): One Step Tub & Shower Cleaner/MR 584
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Product Name/NSN(s): Brush, Bowl, Hardwood/MR 917
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: Defense Commissary Agency, Fort Lee, VA
Product Name/NSN(s): Card, Guide, File
7530–00–988–6520—1/3 Cut, 1st/3rd Positions Tabs, Legal, Light Green
7530–00–988–6517—1/5 Cut, 1st/5th Positions Tabs, Letter, Light Green
Mandatory Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: General Services Administration

Services

Service Type: Janitorial/Custodial Service
Service Purchase For: U.S. Army Reserve Center, 295 Goucher Street: Johnston, Center #1, Johnstown, PA
U.S. Army Reserve Center: Center #2, 1300 St. Clair Road, Johnstown, PA
Johnstown Aviation Support Facility, Airport Road #2, Johnstown, PA
Contracting Activity: Dept of the Army, W6QM MICC Ctr-Ft Dix (RC)
U.S. Marine Corps Reserve Center, 218 Aviation Drive, Johnstown, PA
Contracting Activity: Dept of the Army,

W40M Northern Region Contract Ofc
Mandatory Source of Supply: UNKNOWN

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–11128 Filed 5–7–15; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0014]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, Civil Works Directorate, Department of Army.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers, Civil Works Directorate, Department of Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 7, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, Directorate of Civil Works, Office of Planning and Policy, ATTN: Douglas Gorecki, 441 G Street, Washington, DC 20314, or call 202–761–5450.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: U.S. Army Corps of Engineers, Instrument for Hurricane Evacuation Behavioral Survey; Generic Collection for OMB Control Number 0710–XXXX.

Needs and Uses: The primary purpose of collections to be conducted under this clearance is to provide data which will be used in conjunction with other information to derive numerical values of certain evacuation behaviors which in turn will be used in transportation modeling of evacuation clearance times, along with shelter planning and public outreach. In general all collections under this clearance will be designed based upon accepted statistical practices and sampling methodologies, will gather consistent and valid data that are representative of the target population, address non-response bias issues, and achieve response rates needed to obtain statistically useful results.

Affected Public: Residents, property owners, businesses, nongovernmental organizations, Local Governments.

Annual Burden Hours: 1500 hours.

Number of Respondents: 6000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes (0.25 hours).

Frequency: On occasion.

Respondents are residents living in coastal areas where public officials may call for an evacuation when a hurricane threatens. The sample population queried in this generic collection is typically identified using available hurricane risk data, including data on areas at risk from hurricane storm surge flooding, previous hurricane evacuation studies or hurricane response plans, established hurricane evacuation zones, and in coordination with State and Local governments within the study area who are responsible for hurricane emergency management and evacuation decision making.

Dated: May 5, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11101 Filed 5–7–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0015]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of Army, Department of Defense.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Civil Works announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 7, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, Institute for Water Resources, Casey Building, 8801 Telegraph Road, Alexandria, VA 22315 ATTN: Meredith Bridgers or call 703–428–8458.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Recreation Area and Visitor Center Visitor Comment Cards; Generic Collection for OMB Control Number 0710–XXXX.

Needs and Uses: The information collection requirement is necessary to understand and determine the satisfaction of recreation visitors to US Army Corps of Engineers managed recreation areas.

Affected Public: Public Visitors to US Army Corps of Engineers managed recreation areas.

Annual Burden Hours: 3750 hours.

Number of Respondents: 45,000.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes (0.083 hours).

Frequency: On occasion.

Respondents to this generic collection of information via comment cards are public visitors to U.S. Army Corps of Engineers Recreation Areas. Participation is voluntary. Comment cards are distributed via two methods. In a rack, for example at a visitor center or kiosk, resulting in visitor initiated response. Or scheduled surveys where visitors are intercepted by a survey clerk. The respondent is selected from exiting visitors where one member of the party is asked to complete the card and return to the survey clerk. Recreation areas where comment cards are used meet visitation and funding thresholds or a local administrative need. Survey Clerks are staff or USACE trained volunteers. Visitors are asked questions in the following categories; previous visits, area information sources, fees charged, facilities used, facility rating, and demographics.

Dated: May 5, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11102 Filed 5–7–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Modernization and Repair of Piers 2 and 3, Military Ocean Terminal Concord, CA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army (Army) has prepared a Record of Decision (ROD) for the Modernization and Repair of Piers 2 and 3 at Military Ocean Terminal Concord, California (MOTCO) to document the Army's selection of Alternative 1 of the Final Environmental Impact Statement (EIS) for the action. Alternative 1 was selected because it meets the purpose and need of the proposed action, and balances environmental impacts with operational flexibility by providing MOTCO with safe, functional, and efficient facilities. Alternative 1 will fully implement repairs to Pier 3 and will re-orient and modernize Pier 2 to provide more efficient access for the types of vessels that use the pier. Implementation of Alternative 1 will include extensive demolition of existing Pier 2 and reconstruction of structural elements, replacement of pier-side infrastructure and supporting facilities at Pier 2, upgrades to shore-side roads and electrical infrastructure in the immediate vicinity of Piers 2 and 3, repair piles at Pier 3, and maintenance dredging waterward of Pier 2. The ROD adopts mitigation and management measures.

ADDRESSES: The ROD can be obtained electronically at *http://www.sddc.army.mil/MOTCO/default.aspx.* Written requests to obtain a copy of the ROD should be addressed to Mr. Malcolm Charles, Director of Public Works, Attention: SDAT–CCA–MI (Charles), 410 Norman Avenue, Concord, CA 94520; or emailed to *usarmy.motco.sddc.mbx.list-eis@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Garner, Public Affairs Office, Surface Deployment and Distribution Command; telephone: (618) 220–6284; email: *usarmy.scott.sddc.mbx.command-affairs@mail.mil.*

SUPPLEMENTARY INFORMATION: The Army assessed the potential environmental and socioeconomic impacts associated with those actions necessary to modernize and repair Pier 2 and repair Pier 3 so the Army can maintain its ability to meet Department of Defense (DOD) mission requirements. The selected alternative implements repairs to Pier 3 and re-orients Pier 2 to provide more efficient access for the types of vessels that use the pier. The ROD incorporates the analysis contained in the Final EIS, including comments provided during the public review periods.

Potential impacts were evaluated for noise; air quality; geology, topography, and soils; water resources; biological resources; land use and coastal zone management; transportation; infrastructure; visual resources; recreational resources; socioeconomics; environmental justice and protection of children; cultural resources; and hazardous materials, hazardous waste, toxic substances, and contaminated sites. Based on the analysis described in the Final EIS, all impacts are anticipated to be less than significant.

The Army concluded that the proposed action is consistent, to the maximum extent practicable, with the enforceable policies of the San Francisco Bay Conservation and Development Commission's (BCDC's) Coastal Management Program. BCDC issued conditional concurrences to the Army's Coastal Zone Management Act Consistency Determinations for Piers 3 and 2 on January 21, 2015 and April 9, 2015, respectively. The Army will adhere to the conditions detailed in the respective amended Consistency Determinations.

The ROD adopts mitigation and management measures. The measures include (1) commitments for cultural and biological resources resulting from agency consultations and (2) existing best management practices and standard operating procedures that the Army will continue with implementation of the Alternative 1. Commitments include general and specific measures for the protection of cultural resources and the protection of federally listed species and their habitat. The best management practices and standard operating procedures address erosion control, stormwater management, energy reduction, water efficiency/conservation, hazardous materials management, spill prevention and response, munitions and explosives of concern, natural resources management,

transportation, noise, cultural resources, seismic design, and air quality.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–10588 Filed 5–7–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Tuesday, May 19, 2015. The Public Session will begin at 8:30 a.m. and end at 5:00 p.m.

ADDRESSES: U.S. District Court for the District of Columbia, 333 Constitution Avenue NW., Courtroom #20, 6th Floor, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'') was unable to provide public notification of its meeting of May 19, 2015, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: In section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will consider the issues of social and professional retaliation against individuals who report incidents of sexual assault within the military, in order to develop recommendations for improving the military's prevention and response to retaliation. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda

- 8:00 a.m.–8:30 a.m. Administrative Session (*41 CFR 102–3.160,* not subject to notice & open meeting requirements)
- 8:30 a.m.–9:45 a.m. Human Rights Watch Report and Recommendations (*public meeting begins*)
  —*Speakers: Human Rights Watch Senior Counsel and survivors*
- 9:45 a.m.–10:30 a.m. Ms. Susan Burke & Client Perspectives on Retaliation and Social Ostracism
  —*Speakers: Ms. Susan Burke and survivor clients*
- 10:30 a.m.–10:40 a.m. Break
- 10:40 a.m.–12:15 p.m. Victim Perspectives on Retaliation and Social Ostracism: Military Survivor Experiences
  —*Speakers: Survivors of Military Sexual Assault*
- 12:15 p.m.–1:00 p.m. Lunch
- 1:00 p.m.–2:00 p.m. Fear of Retaliation & Impact on Reporting: SARC and VA Perspectives
  —*Speakers: Sexual Assault Response Coordinators and Victim Advocates from the Military Services*
- 2:00 p.m.–3:00 p.m. Preventing and Responding to Retaliation and Social Ostracism
  —*Speakers: Senior Noncommissioned Officers from the Military Services*
- 3:00 p.m.–3:10 p.m. Break
- 3:10 p.m.–4:45 p.m. Roles and Responsibilities Regarding Retaliation: Perspectives from Installation Level Commanders
—*Speakers: Installation-Level Commanders*
- 4:45 p.m.–5:00 p.m. Public Comment

Availability of Materials for the Meeting: A copy of the May 19, 2015 meeting agenda or any updates to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials presented related to the meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on May 19, 2015 in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five

minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: May 5, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11205 Filed 5–7–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0041]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is WUSU 12, USUHS Vehicle Administration Records (February 22, 1993, 58 FR 10920).

DATES: Comments will be accepted on or before June 8, 2015. This proposed action will be effective on the day 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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices 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 Division Web site at *http://dpcld.defense.gov/.* The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

WUSU 12

USUHS Vehicle Administration Records (February 22, 1993, 58 FR 10920).

Reason: Based on a recent review of WUSU 12, USUHS Vehicle Administration Records, it has been determined that this function is now performed by the Department of the Navy. This system of records is covered by system of records notices NM05512–1, Vehicle Parking Permit and License Control System (October 1, 2008, 73 FR 57086) and NM05512–2, Badge and Access Control System Records (April 9, 2014, 79 FR 19593); therefore, this notice can now be deleted.

[FR Doc. 2015–11100 Filed 5–7–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Commission on the Future of the Army; Notice of Federal Advisory Committee Meeting

AGENCY: Deputy Chief Management Officer, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The DoD is publishing this notice to announce the meeting of the National Commission on the Future of the Army (''the Commission''). The meeting will be partially closed to the public.

DATES: Date of the Closed Meeting, including Hearing: Tuesday, May 19, 2015, from 7:30 a.m. to 5:30 p.m.

Date of the Open Meeting, including Hearing and Commission Discussion: Wednesday, May 20, 2015, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: Address of Closed Meeting, May 19: Room 3D684, Pentagon, Washington, DC 20310. Address of Open Meeting, May 20: 12th Floor, Room 12158, James Polk Building, 2521 S. Clark St., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Don Tison, Designated Federal Officer, National Commission on the Future of the Army, 700 Army Pentagon, Room 3E406, Washington, DC 20310–0700, Email: *dfo.ncfa@ncfa.ncr.gov*. Desk: (703) 692–9099. Facsimile: (703) 697–8242.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the National Commission on the Future of the Army was unable to provide public notification of its meeting of May 19–20, 2015, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting will be held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of Meetings: During the closed meeting on Tuesday, May 19, 2015, the Commission will hear testimony from individual witnesses and engage in discussion on the operational environment, defense guidance, force requirements, and operational readiness. During the open meeting on Wednesday, May 20, 2015, the Commission will hear testimony from individual witnesses and immediately afterwards discuss the testimony provided; identify requests for information; and other topics raised from the two meetings.

Agendas: May 19, 2015—Closed Hearing: DoD military leaders will speak at the closed hearing on May 19, 2015 and have been asked to address the analytical basis, assumptions and debates that affected the Army's force structure for FY2016, future operational environments and threats for the land forces (Classified), Force Requirements from the Defense Planning Guidance (Classified), Global Employment of the Force (Classified), Global Force

Integration Matrix (Classified), Combatant Command Integrated Priorities (Classified), and national security matters pertaining to the Regular Army, the Army National Guard, and the Army Reserve impacting the capabilities and force structure of the total Army. DoD speakers will also provide information on the roles, missions and capabilities of the various DoD components and how they contribute to the national defense strategy, the integration of force requirements, and DoD's strategies and capabilities to address conflicts and threats. Speakers include, but are not limited to, the Secretary and Chief of Staff of the Army; the Chief of the National Guard Bureau; Director, Army National Guard; the Chief of the Army Reserve; and representatives from the Joint Chiefs of Staff, Office of the Secretary of Defense/Policy, and the Defense Intelligence Agency. All presentations and resulting discussion are classified.

May 20, 2015—Public Hearing: Congressional representatives, DoD leaders, and professional military associations are invited to speak at the public hearing on May 20, 2015 and are asked to address matters pertaining to the Army, Army National Guard, and Army Reserve, such as their common and unique interests, roles, history, organizational structure, and operational factors influencing decision-making, as well as the transfer of certain aircraft between the Army components. These witnesses are also asked to address the criteria the Commission must consider pursuant to section 1703 of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291)—(a) meet current and anticipated requirements of the combatant commands; (b) achieve cost-efficiency between the regular and reserve components of the Army, manages military risk, takes advantage of the strengths and capabilities of each, and considers fully burdened lifecycle costs; (c) ensure that the regular and reserve components of the Army have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provide for sufficient numbers of regular members of the Army to provide a base of trained personnel from which the personnel of the reserve components of the Army could be recruited; (e) maintain a peacetime rotation force to avoid exceeding operational tempo goals of 1:2 for active members of the Army and 1:5 for members of the reserve components of the Army; and (f) manage strategic and operational risk by making tradeoffs among readiness, efficiency, effectiveness, capability, and affordability. The Commission Chairman will provide an update on Commission activities, and individual Commissioners will, if applicable, report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility: In accordance with applicable law, 5 U.S.C. 552b(c), and 41 CFR 102–3.155, the DoD has determined that the meeting scheduled for May 19, 2015 will be closed to the public. Specifically, the Assistant Deputy Chief Management Officer, with the coordination of the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it will discuss matters covered by 5 U.S.C. 552b(c)(1). Pursuant to 41 CFR 102–3.140 through 102–3.165 and the availability of space, the meeting scheduled for May 20, 2015 at the James Polk building is open to the public. Seating is limited and pre-registration is strongly encouraged. Media representatives are also encouraged to register. Members of the media must comply with the rules of photography and video filming in the James Polk Building. The closest public parking facility is located in the basement and along the streets. Visitors will be required to present one form of photograph identification. Visitors to the James Polk Office Building will be screened by a magnetometer, and all items that are permitted inside the building will be screened by an x-ray device. Visitors should keep their belongings with them at all times. The following items are strictly prohibited in the James Polk Office Building: any pointed object, *e.g.,* knitting needles and letter openers (pens and pencils are permitted.); any bag larger than 18″ wide x 14″ high x 8.5″ deep; electric stun guns, martial arts weapons or devices; guns, replica guns, ammunition and fireworks; knives of any size; mace and pepper spray; razors and box cutters.

Written Comments: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mr. Donald Tison, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment should include the author's name, title or affiliation, address, and daytime phone number. All comments received before Wednesday, May 13, 2015, will be provided to the Commission before the May 20, 2015 meeting. Comments received after Wednesday, May 13, 2015, will be provided to the Commission prior to its next meeting. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section.

Oral Comments: In addition to written statements, one and one half hours will be reserved for governmental entities, individuals or interest groups to address the Commission on May 20, 2015. Those interested in presenting oral comments to the Commission should summarize their oral statement in writing and submit with their registration. The Commission's staff will assign a time to the presenter of an oral comment at the meeting and each commenter will have equal time, which will not exceed five minutes. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration: Individuals and entities who wish to attend the public hearing and meeting on Wednesday, May 20, 2015 are encouraged to register for the event with the DFO using the electronic mail and facsimile contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, day-time phone number. This information will assist the Commission in contacting individuals should it decide to do so at a later date. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments should be typed.

Additional Information: The DoD sponsor for the Commission is the Deputy Chief Management Officer. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2016 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive

study of the structure of the Army will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the Army in a manner consistent with available resources.

Dated: May 4, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–11076 Filed 5–7–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0060]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fulbright-Hays Seminars Abroad Program Application Package

AGENCY: Office of Postsecondary Education (OPE), 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 a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 8, 2015.

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–2015–ICCD–0060 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Maria Chang, 202–219–7001.

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: Fulbright-Hays Seminars Abroad Program Application Package.

OMB Control Number: 1840–0501.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 300.

Total Estimated Number of Annual Burden Hours: 5,400.

Abstract: Application forms are to be used by the applicants under the Fulbright-Hays Seminars Abroad Program which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject areas of the social sciences, social studies and the humanities. The changes suggested are minor, *i.e.* updating language to reflect the current seminars being offered and the electronic system being used to accept applications. A reduction in burden from the previously approved collection is anticipated as program funding cuts have decreased the numbers of applicants. In addition, the number of references that applicants are being asked to submit has been reduced from three to two.

Dated: May 5, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–11095 Filed 5–7–15; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0231; FRL–9925–80]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides'' and identified by EPA ICR No. 0161.13 and OMB Control No. 2070–0027, represents the renewal of an existing ICR that is scheduled to expire on January 31, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 7, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0231, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about

dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Scott Drewes, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0107; email address: *Drewes.Scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides.

ICR number: EPA ICR No. 0161.13.

OMB control number: OMB Control No. 2070–0027.

ICR status: This ICR is currently scheduled to expire on January 31, 2016. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection request is designed to enable the Environmental Protection Agency (EPA) to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticide. This information collection request also includes the burden imposed by export labeling requirements, which meet the definition of third-party disclosure. In addition to the export notification for unregistered pesticides, FIFRA requires that all pesticides include appropriate labeling. There are different requirements for registered and unregistered products. This information collection has been constant since the implementation of the 1993 pesticide export policy governing the export of pesticides, devices, and active ingredients used in producing pesticides.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one to eight hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are individuals or entities that produce and export pesticides. The North American Classification System (NAICS) code assigned to the parties responding to this information collection is 325300.

Estimated total number of potential respondents: 50.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 20–60.

Estimated total annual burden hours: 17,993 hours.

Estimated total annual costs: $ 1,224,655. There are no capital investment or maintenance and operational costs for this information collection.

III. Are there changes in the estimates from the last approval?

There is a decrease of 6,477 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updating of burden estimates for this collection based upon historical information on the number of responses per year. Based upon revised estimates, the number of exported products has decreased from 900 to 611, with a corresponding decrease in the associated burden. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 1, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–11212 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0301; FRL–9927–18]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2014 to March 31, 2015 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0301, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption.

III. Emergency Exemptions

A. U.S. States and Territories

Alabama

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; February 26, 2015 to November 30, 2015.

Arkansas

State Plant Board

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; February 26, 2015 to October 31, 2015.

California

Department of Environmental Protection

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Colorado

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Florida

Department of Agriculture and Consumer Services

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific Exemption: EPA authorized the use of clothianidin on immature (3 to 5 years old) citrus trees to manage transmission of Huanglongbing (HLB) disease vectored by the Asian citrus psyllid; March 31, 2015 to October 31, 2015.

Georgia

Department of Agriculture

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; February 26, 2015 to November 30, 2015.

Idaho

Department of Agriculture

Crisis exemption: On March 6, 2015 the Idaho Department of Agriculture declared a crisis for the use of thiabendazole on succulent pea seed to control *Fusarium* and *Aschochyta* blight.

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Illinois

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Iowa

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Kansas

Department of Agriculture

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; March 31, 2015 to November 30, 2015.

Louisiana

Department of Agriculture and Forestry

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of anthraquinone on rice seed to repel blackbirds; March 20, 2015 to June 1, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; March 12, 2015 to October 31, 2015.

Maryland

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Massachusetts

Department of Agricultural Resources

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 30, 2015 to December 31, 2015.

Michigan

Department of Agriculture and Rural Development

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 12, 2015 to December 31, 2015.

Minnesota

Department of Agriculture

Quarantine exemption: EPA authorized the use of potassium chloride to control zebra and quagga mussels in Christmas Lake and Lake Independence; November 26, 2014 to November 26, 2017.

Mississippi

Department of Agriculture and Commerce

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 5, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; February 26, 2015 to October 31, 2015.

Missouri

Department of Agriculture

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; March 27, 2015 to October 31, 2015.

Nebraska

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Nevada

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 20, 2015 to December 31, 2015.

North Carolina

Department of Agriculture and Consumer Services

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

North Dakota

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Ohio

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 12, 2015 to December 31, 2015.

Oklahoma

Department of Agriculture, Food, and Forestry

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; March 27, 2015 to October 31, 2015.

Oregon

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Pennsylvania

Department of Agriculture

Specific exemption: EPA authorized the use of thiabendazole on mushroom to control *Trichoderma* green mold; March 26, 2015 to March 26, 2016.

South Carolina

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; March 27, 2015 to November 30, 2015.

Tennessee

Department of Agriculture

Specific exemption: EPA authorized the use of fluridone in cotton to control Palmer amaranth; January 20, 2015 to August 31, 2015.

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 20, 2015 to December 31, 2015.

Texas

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Specific exemption: EPA authorized the use of flutriafol on cotton to control root rot; January 23, 2015 to June 30, 2015.

Specific exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; February 26, 2015 to October 31, 2015.

Utah

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 12, 2015 to December 31, 2015.

Vermont

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Washington

State Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

West Virginia

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 12, 2015 to December 31, 2015.

Wisconsin

Department of Agriculture, Trade and Consumer Protection

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

Wyoming

Department of Agriculture

Specific exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 4, 2015 to December 31, 2015.

B. Federal Departments and Agencies

National Aeronautics and Space Administration

Specific exemption: EPA authorized the use of ortho-phthalaldehyde (OPA) to control aerobic/microaerophilic water bacteria in the internal active thermal control system coolant of the International Space Station; November 26, 2014 to November 26, 2015.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 4, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2015–11214 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0015; FRL–9927–43–OAR]

Proposed Information Collection Request; Comment Request; Part 70 State Operating Permit Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Part 70 State Operating Permit Program (Renewal)'' (EPA ICR No. 1587.12, OMB Control No. 2060.0243) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This ICR renewal covers state, local and tribal (state) air quality operating permitting programs under 40 CFR part 70, as authorized under Title V of the Clean Air Act (CAA or Act) for the period of November 1, 2015, through October 31, 2018. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before July 7, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0015, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit *http://www.epa.gov/dockets/comments.html* for instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

For additional submission methods, the full EPA public comment policy and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/comments.html.*

FOR FURTHER INFORMATION CONTACT: Dylan C. Mataway-Novak, Air Quality Policy Division, Office of Air Quality Planning and Standards, C504–05, U.S. Environmental Protection Agency, Research Triangle Park, NC; telephone number: (919) 541–5795; fax number: (919) 541–5509; email address: *mataway-novak.dylan@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 *http://www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* allowing electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Title V of the CAA requires states to develop and implement a program for issuing operating permits to all sources that fall under any Act definition of ''major'' and certain other non-major sources that are subject to Federal air quality regulations. The Act further requires EPA to develop regulations that establish the minimum requirements for those state operating permits programs and to oversee implementation of the state programs.

The EPA regulations setting forth requirements for the state operating permit program are found at 40 CFR part 70. The part 70 program is designed to be implemented primarily by state, local and tribal permitting authorities in all areas where they have jurisdiction.

In order to receive an operating permit for a major or other source subject to the permitting program, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that its facility meets all applicable statutory and regulatory requirements. Specific activities and requirements are listed and described in the Supporting Statement for the 40 CFR part 70 ICR.

Under 40 CFR part 70, state, local and tribal permitting authorities review permit applications, provide for public review of proposed permits, issue permits based on consideration of all technical factors and public input and review information submittals required of sources during the term of the permit. Also, under 40 CFR part 70, the EPA reviews certain actions of the permitting authorities and provides oversight of the programs to ensure that they are being adequately implemented and enforced. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal, state, local and tribal permitting authorities to adequately review the permit applications and thereby properly administer and manage the program.

Information that is collected is handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2). *See* also section 114(c) of the Act.

Respondents/affected entities: Industrial plants (sources); state, local and tribal permitting authorities.

Respondent's obligation to respond: Mandatory (*see* 40 CFR part 70).

Estimated number of respondents: 15,780 sources and 116 state, local and tribal permitting authorities.

Frequency of response: On occasion.

Total estimated burden: 5,168,815 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $326,493,677 (per year). There are no annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 144,871 hours per year for the estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to updated estimates of the number of sources and permits subject to the part 70 program, rather than any change in federal mandates.

Dated: April 30, 2015.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2015–11216 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9020–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 04/27/2015 Through 05/01/2015

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20150123, Draft EIS, NPS, ID, City of Rocks National Reserve Draft General Management Plan, Comment Period Ends: 06/22/2015 Contact: Wallace Keck 208–824–5911.

EIS No. 20150124, Final Supplement, FAA, UT, Cal Black Memorial Airport, Review Period Ends: 06/08/2015, Contact: Janell Barrilleaux 425–227–2611.

EIS No. 20150125, Final Supplement, NNSA, DOE, Surplus Plutonium Disposition, Review Period Ends: Once a Preferred Alternative is identified, DOE will announce its preference in a **Federal Register** notice. DOE would publish a record of decision no sooner than 30 days after its announcement of a Preferred Alternative. Contact: Sachiko McAlhany 877–344–0513.

Dated: May 5, 2015.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–11201 Filed 5–7–15; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the report on competitiveness of the Export-Import Bank of the United States to Congress.

Time and Place: Wednesday, May 20, 2015 from 11:00 a.m.–3:00 p.m.. A break for lunch will be at the expense of the attendee. Security processing will be necessary for reentry into the building. The meeting will be held at Ex-Im Bank in the Main Conference Room—11th floor, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: Discussion of EXIM's Annual Competitiveness Report to Congress.

Public Participation: The meeting will be open to public participation, and 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, you may contact Niki Shepperd at *niki.shepperd@exim.gov* to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email Niki Shepperd at *niki.shepperd@exim.gov* prior to May 13, 2015.

Members of the Press: For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building please email Dolline Hatchett at *dolline.hatchett@exim.gov* to be placed on an attendee list.

Further Information: For further information, contact Niki Shepperd, 811 Vermont Ave. NW., Washington, DC 20571, at *niki.shepperd@exim.gov*

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2015–11081 Filed 5–7–15; 8:45 am]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 14, 2015, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT:

Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- April 9, 2015

B. *New Business*

- Institution Stockholder Voting Procedures—Final Rule

Closed Session *

- Office of Secondary Market Oversight Quarterly Report

Dated: May 5,2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–11285 Filed 5–6–15; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8)and (9).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1200]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 7, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

OMB Control Number: 3060–1200.

Title: Rural Broadband Experiments and Post-Selection Review of Rural Broadband Experiment Winning Bidders.

Form Number: FCC Form 5620.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 47 respondents; 135 responses.

Estimated Time per Response: 2 to 20 hours.

Frequency of Response: One-time and occasional reporting requirements; annual recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154 and 254.

Total Annual Burden: 1,834 hours.

Total Annual Cost: No cost(s).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information collected in FCC Form 5620 will be confidential. Information reported in the November interim progress report and the build-out milestone certifications will be made publicly available.

Needs and Uses: On January 31, 2014, the Commission released the Tech Transitions *et al.,* GN Docket No. 13–5 *et al.,* 29 FCC Rcd 1433 (2014) (*Tech Transitions Order*), that adopted targeted experiments to explore the impact of technology transitions on rural Americans, including those living on Tribal lands. On July 14, 2014, the Commission released Connect America Fund *et al.,* WC Docket No. 10–90 *et al.,* Report and Order and Further Notice of Proposed Rulemaking, FCC 14–98 (rel. July 14, 2014) (*Rural Broadband Experiments Order*), which established certain parameters and requirements for the rural broadband experiments adopted by the Commission in the *Tech Transitions Order.*

This information collection addresses requirements to carry out the rural broadband experiments the Commission adopted in the *Tech Transitions Order* and the *Rural Broadband Experiments Order.* The Commission has received OMB approval for most of the information collections required by the orders. At a later date, the Commission plans to submit additional revisions to a separate information collection for OMB's review to address other reporting requirements adopted in the *Rural Broadband Experiments Order.* For this revision, subject to OMB approval, the Commission proposes to incorporate the November interim progress report, build-out milestone certifications, and recordkeeping requirements that the Commission adopted in the *Rural*

Broadband Experiments Order. If approved, recipients of the rural broadband experiments will be required to submit a one-time report on November 1st after they begin receiving support. This report must describe the status of the recipient's experiment as of September 30th immediately preceding the report (*i.e.,* whether vendors have been hired, permits have been obtained, and construction has begun), and include evidence demonstrating which locations if any the recipient has built out to in its project areas and evidence demonstrating that the recipient is meeting the public service obligations for the relevant experiment category, including a certification that demonstrates the service the recipient offers complies with the Commission's latency requirements. Rural broadband experiment recipients will also be required to certify that they have met the build-out milestones adopted in the *Rural Broadband Experiments Order.* These certifications will be due for all recipients by the end of the third year and fifth year of support. Recipients that have chosen to receive 30 percent of their support upfront will also be required to submit a build-out milestone certification within 15 months of their first disbursement. Recipients that are determined to not be in compliance with the terms and conditions of the rural broadband experiments during their support term will also be required to submit a certification to demonstrate that they have come into compliance. All of these certifications must be accompanied by the same types of evidence required for the November interim progress report. This report and certifications will enable the Commission to monitor the progress of the rural broadband experiments and ensure that the support is being used for its intended purposes. Finally, rural broadband experiment recipients will be subject to a 10-year record retention requirement and must make those documents and records available to the Commission, any of its Bureaus or Offices, the Universal Service Administrative Company, and their respective auditors to aid these entities in overseeing the recipients' compliance with the terms and conditions of rural broadband experiment support. The Commission also proposes to eliminate FCC Form 5610 that is a part of this information collection. The deadline to file FCC Form 5610 with the Commission was November 7, 2014. Because the Commission does not anticipate holding another round of bidding, no additional entities will be required to file FCC Form 5610. There are no proposed changes to the currently approved FCC Form 5620 which is also a part of this information collection. However, the Commission proposes to increase the number of respondents involved in the post-selection review because more winning bidders were provisionally selected than the Commission anticipated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11091 Filed 5–7–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 15–105; DA 15–516]

Office of Engineering and Technology and Wireless Telecommunications Bureau Seeks Information on Current Trends in LTE–U and LAA Technology

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Office of Engineering and Technology (OET) and Wireless Telecommunications Bureau (WTB) seek information on technologies and techniques they will implement to share spectrum with existing unlicensed operations and technologies such as Wi-Fi that are widely used by the public. Parties within the wireless industry are developing a version of commercial wireless LTE technology called LTE-Unlicensed (LTE–U) that is intended for operations in certain unlicensed frequency bands. LTE–U could operate in conjunction with licensed commercial wireless services using a technique called Licensed Assisted Access (LAA) whereby a channel in an operator's licensed spectrum is used as the primary channel for devices operating on an unlicensed basis.

DATES: Comments must be filed on or before June 11, 2015 and reply comments must be filed on or before June 26, 2015.

ADDRESSES: You may submit comments, identified by ET Docket No. 15–105, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Ira Keltz, Office of Engineering and Technology, Room 7–C250, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 and Chris Helzer, Wireless Telecommunications Bureau, Room 6–6415, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418–0616, email *Ira.Keltz@fcc.gov,* and Chris Helzer, (202) 418–2791, email *Chris.Helzer@fcc.gov* and TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, ET Docket No. 15–105, DA 15–516, released May 5, 2015. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, 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. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

• 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, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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

Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS.

Synopsis of Public Notice

1. Parties within the wireless industry are developing a version of commercial wireless LTE technology called LTE-Unlicensed (LTE–U) that is intended for operations in certain unlicensed frequency bands. LTE–U could operate in conjunction with licensed commercial wireless services using a technique called Licensed Assisted Access (LAA) whereby a channel in an operator's licensed spectrum is used as the primary channel for devices operating on an unlicensed basis. By this public notice, the Office of Engineering and Technology and the Wireless Telecommunications Bureau seek information on these technologies and the techniques they will implement to share spectrum with existing unlicensed operations and technologies such as Wi-Fi that are widely used by the public.

2. A number of organizations have approached the Commission about the development of LTE–U and LAA in the context of the 3.5 GHz and 5 GHz proceedings, which would make spectrum available for general access and unlicensed use, respectively.[1] Some have expressed concern that LTE–U and LAA operations may have a detrimental impact on existing and future use of unlicensed or shared spectrum. Others have asserted that LTE–U and LAA are more efficient than other currently available unlicensed technologies, that LTE–U and LAA include features to share the spectrum fairly with no detrimental impact on existing users of the spectrum, and that consumers will ultimately benefit from increased access to spectrum. We observe that the impact of LTE–U and LAA on unlicensed operations and technologies such as Wi-Fi would be quite different in each bands—the 3.5 GHz band is generally newly available spectrum while the 5 GHz bands are already heavily used by Wi-Fi and other unlicensed devices.

3. The 3rd Generation Partnership Project (3GPP), which develops standards for commercial wireless technologies, is developing the LTE–U and LAA standards. The Institute of Electrical and Electronics Engineers Working Group 802.11 (IEEE 802.11) develops standards for wireless local area networks such as Wi-Fi and other unlicensed technologies. Although many parties participate in both standards bodies, the organizations have a limited historical working relationship given their different backgrounds and scopes. We are aware that some companies have formed the LTE–U Forum,[2] which is considering deployment of LTE–U/LAA using a ''pre-standard'' version of LTE–U/LAA.

4. The Commission has historically adopted rules that are technologically neutral and remains committed to this policy. With this principle in mind, we are opening this docket to provide an opportunity for interested parties to enable a fully participatory and transparent discussion about LTE–U and LAA technologies and how they will coexist with other technologies, including Wi-Fi. We specifically seek information on the following topics:

• What different variations of LTE in unlicensed spectrum (*e.g.,* LTE–U, LAA) are under active development or on a roadmap for future development? How do they relate to one another in terms of technology, potential use, and timing of availability?

• What is the current state of development of the LTE–U and LAA standards and what is the anticipated schedule for completion of the LTE–U and LAA standards?

• What is the status of coordination between 3GPP and the IEEE 802.11 on LTE–U and LAA, and what is the process for coming to agreement on appropriate sharing characteristics to ensure co-existence with the IEEE 802.11 family of standards?

• What are the anticipated technical characteristics (*e.g.* bandwidth(s), listen-before-talk, transmission durations, etc.) of LTE–U and LAA?

• What tests or analyses have been performed to understand the impact of LTE–U and LAA on the existing commercial wireless and unlicensed ecosystems?

• Precisely how will LAA integrate licensed and unlicensed carriers, particularly with regard to controlling access to spectrum?

• To what extent is a standalone form of LTE–U being developed, that is, a form that can operate without a licensed primary channel?

• Are existing devices capable of software upgrades to implement LTE–U and LAA?

• What frequency bands are envisioned for deployment of LTE–U and LAA?

• What plans do carriers and manufacturers have for pre-standard deployment of LTE–U and LAA equipment including possible upgrades to 3GPP-based LTE–U or LAA and how would the above questions (particularly with respect to coexistence issues) be addressed relative to pre-standard versions of LTE–U and LAA?

5. In addition to information in response to these questions, we encourage parties to submit whatever additional information they feel is relevant to this matter.

6. This public notice is being issued pursuant to §§ 0.31 and 0.131 of the Commission's rules by the Office of Engineering and Technology and the Wireless Telecommunications Bureau.[3]

7. For further information contact Ira Keltz in the Office of Engineering and Technology, *Ira.Keltz@fcc.gov,* 202–418–0616 or Chris Helzer, in the Wireless Telecommunications Bureau, *chris.helzer@fcc.gov,* 202–418–2791.

8. For more news and information about the Federal Communications Commission, please visit: *www.fcc.gov.*

[1] *See* Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band, GN Docket No. 12–354, *Report and Order and Second Further Notice of Proposed Rulemaking,* adopted April 17, 2015, FCC 15–47. *See also* Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band, ET Docket No. 13–49, First Report and Order, released April 1, 2014, *see* 29 FCC Rcd 4127 (2014).

[2] The LTE–U Forum, which was formed in 2014, includes Verizon, Alcatel-Lucent, Ericsson, Qualcomm Technologies, and Samsung. The Forum is developing technical specifications for LTE–U to demonstrate coexistence with Wi-Fi devices in the 5 GHz bands.

[3] 47 CFR 0.31, 0.131.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

[FR Doc. 2015–11211 Filed 5–7–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0174. 3060–0580, 3060–1154 and 3060–1174]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 8, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0174.

Title: Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Parties: Business or other for profit entities; Individuals or households.

Number of Respondents and Responses: 22,900 respondents and 1,877,000 responses.

Estimated Time per Response: .0011 to .2011 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 249,043 hours.

Total Annual Cost: $34,623.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: The FCC is preparing a system of records, FCC/MB–2, ''Broadcast Station Public Inspection Files,'' to cover the personally identifiable information (PII) that may be included in the broadcast station public inspection files. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment(s): The FCC is preparing a PIA.

Needs and Uses: The information collection requirements that are approved under this collection are as follows:

47 CFR 73.1212 requires a broadcast station to identify at the time of broadcast the sponsor of any matter for which consideration is provided. For advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file. Pursuant to the changes contained in 47 CFR 73.1212(e) and 47 CFR 73.3526(e)(19), this list, which could contain personally identifiable information, would be located in a public inspection file to be located on the Commission's Web site instead of being maintained in the public file at the station. Burden estimates for this change are included in OMB Control Number 3060–0214.

47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which money, service or other valuable consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. Under this rule section, when advertising commercial products or services, an announcement stating the

sponsor's corporate or trade name, or the name of the sponsor's product is sufficient when it is clear that the mention of the name of the product constitutes a sponsorship identification. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

OMB Control Number: 3060–0580.

Title: Section 76.1710, Operator Interests in Video Programming.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time per Response: 15 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 22,500 hours.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 76.1710 requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. The records must be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

OMB Control Number: 3060–1154.

Title: Commercial Advertisement Loudness Mitigation (''CALM'') Act; General Waiver Requests.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 20 respondents and 20 responses.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 20 hours.

Total Annual Burden: 400 hours.

Total Annual Cost to Respondents: $12,000.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents, but, in accordance with the Commission's rules, 47 CFR 0.459, a station/MVPD may request confidential treatment for financial information supplied with its waiver request.

Privacy Impact Assessment: No impact(s).

Needs and Uses: TV stations and MVPDs may file general waiver requests to request waiver of the rules implementing the CALM Act for good cause. The information obtained by general waiver requests will be used by Commission staff to evaluate whether grant of a waiver would be in the public interest.

OMB Control Number: 3060–1174.

Title: Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Not for profit institutions.

Number of Respondents and Responses: 2,200 respondents and 30,800 responses.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; One-time reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 0.25–1.5 hours.

Total Annual Burden: 17,050 hours.

Total Annual Cost to Respondents: $330,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303, 307 and 308.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2012, the Commission adopted a Notice of Proposed Rulemaking (''NPRM'') in MB Docket 12–106, FCC 12–43, In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations. Under the Commission's existing rules, a noncommercial educational (''NCE'') broadcast station may not conduct fundraising activities to benefit any entity besides the station itself if the activities would substantially alter or suspend regular programming. The NPRM proposes to relax the rules to allow NCE stations to spend up to one percent of their total annual airtime conducting on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations.

A final rulemaking has not been adopted by the Commission to date. The Commission would like to keep this collection in OMB's inventory. We will receive OMB final approval once the final rulemaking is adopted by the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11090 Filed 5–7–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–1003]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 8, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1003.

Title: Communications Disaster Information Reporting System (DIRS).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and/or State, local or tribal governments.

Number of Respondents: 4,500 respondents; 39,500 responses.

Estimated Time per Response: 0.1 hours to 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47. U.S.C. 154(i), 218 and 303(r) of the Communications Act of 1934, as amended.

Total Annual Burden: 5,950 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In accordance with 47 CFR 0.408.

Needs and Uses: In response to the events of September 11, 2001, the Federal Communications Commission (Commission or FCC) created an Emergency Contact Information System to assist the Commission in ensuring rapid restoration of communications capabilities after disruption by a terrorist threat or attack, and to ensure that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States. The Commission submitted, and OMB approved, a collection through which key communications providers could voluntarily provide contact information.

The Commission's Public Safety and Homeland Security Bureau (PSHSB) developed the Disaster Information Reporting System (DIRS) that uses electronic forms to collect Emergency Contact Information forms and through which participants may inform the Commission of damage to communications infrastructure and facilities due to major emergencies and may request resources for restoration. The Commission updated the process by increasing the number of reporting entities to ensure inclusion of wireless, wireline, broadcast, cable, VoIP, and broadband Internet access communications providers. The Commission is requesting a renewal of the currently approved collection. It is imperative that the Disaster Information Reporting System be in place so that the Commission has an accurate picture of the communications landscape during disasters.

Legal authority for this collection of information is contained in 47 U.S.C. 154(i), 218, 303(r) and 47 CFR 0.181(h).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–11089 Filed 5–7–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 15–02]

Combustion Store Limited v. UniGroup Worldwide—UTS; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Combustion Store Limited, hereinafter ''Complainant,'' against UniGroup Worldwide-UTS, hereinafter ''Respondent.'' Complainant states it is a ''firm engaged in the business of supplying airplane parts'' with a principal place of business in England. Complainant alleges that Respondent is an ocean transportation intermediary (OTI) with its primary place of business in North Carolina.

Complainant alleges that Respondent has violated the Shipping Act, 46 U.S.C. 41102(c), which provides that an OTI ''may not fail to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property,'' in connection with a shipment of two used aircraft engines. Complainant alleges that Respondent ''failed to exercise due diligence in supervising the activities of its subcontracted service providers'' to ensure shipment of the log books associated with the engines. Complainant alleges that ''the engines are for all intents and purposes worthless without the log books.''

Complainant seeks reparations in the amount of $397,517, plus interest and attorneys fees ''or such other sum as the Commission may determine to be proper as an award of reparations.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/15-02/.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by May 4, 2016, and the final decision of the Commission shall be issued by November 4, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–11130 Filed 5–7–15; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1640–PN]

Medicare Program; Request for an Exception to the Prohibition on Expansion of Facility Capacity Under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: The Social Security Act prohibits a physician-owned hospital from expanding its facility capacity, unless the Secretary of the Department of Health and Human Services (the Secretary) grants the hospital's request for an exception to that prohibition after considering input on the hospital's request from individuals and entities in the community where the hospital is located. The Centers for Medicare & Medicaid Services (CMS) has received a request from a physician-owned hospital for an exception to the prohibition against expansion of facility capacity. This notice solicits comments on the request from individuals and entities in the community in which the physician-owned hospital is located. Community input may inform our determination regarding whether the requesting hospital qualifies for an exception to the prohibition against expansion of facility capacity.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 8, 2015.

ADDRESSES: In commenting, please refer to file code CMS–1640–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this exception request to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

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–1640–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: Department of Health and Human Services, Attention: CMS–1640–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561 or Teresa Walden, (410) 786–3755.

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.

We will allow stakeholders 30 days from the date of this notice to submit written comments. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this notice, 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, please phone 1–800–743–3951.

I. Background

Section 1877 of the Social Security Act (the Act), also known as the physician self-referral law—(1) prohibits a physician from making referrals for certain ''designated health services'' (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership or compensation), unless the requirements of an applicable exception are satisfied; and (2) prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third party payer) for those DHS furnished as a result of a prohibited referral.

Section 1877(d)(3) of the Act provides an exception, known as the ''whole hospital exception,'' for physician ownership or investment interests held in a hospital located outside of Puerto Rico, provided that the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

Section 1877(d)(2) of the Act provides an exception for physician ownership or investment interests in rural providers (the ''rural provider exception''). In order for an entity to qualify for the rural provider exception, the DHS must be furnished in a rural area (as defined in section 1886(d)(2) of the Act) and substantially all the DHS furnished by the entity must be furnished to individuals residing in a rural area.

Section 6001(a)(3) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to together as ''the Affordable Care Act'') amended the whole hospital and rural provider exceptions to the physician self-referral prohibition to impose additional restrictions on physician ownership and investment in hospitals and rural providers. Since March 23, 2010, a physician-owned hospital that seeks to avail itself of either exception is prohibited from expanding facility capacity unless it qualifies as an ''applicable hospital'' or ''high Medicaid facility'' (as defined in sections 1877(i)(3)(E), (F) of the Act and 42 CFR 411.362(c)(2), (3) of our regulations) and has been granted an exception to the prohibition by the Secretary of the Department of Health and Human Services (the Secretary). Section 1877(i)(3)(A)(ii) of the Act provides that individuals and entities in the community in which the provider requesting the exception is located must have an opportunity to provide input with respect to the provider's application for the exception. For further information, we refer readers to the CMS Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.*

II. Exception Request Process

On November 30, 2011, we published a final rule in the **Federal Register** (76 FR 74122, 74517 through 74525) that, among other things, finalized § 411.362(c), which specified the process for submitting, commenting on, and reviewing a request for an exception to the prohibition on expansion of facility capacity. We published a subsequent final rule in the **Federal Register** on November 10, 2014 (79 FR

66770) that made certain revisions. These revisions include, among other things, permitting the use of data from an external data source or data from the Hospital Cost Report Information System (HCRIS) for specific eligibility criteria.

As stated in regulations at § 411.362(c)(5), we will solicit community input on the request for an exception by publishing a notice of the request in the **Federal Register**. Individuals and entities in the hospital's community will have 30 days to submit comments on the request. Community input must take the form of written comments and may include documentation demonstrating that the physician-owned hospital requesting the exception does or does not qualify as an ''applicable hospital'' or ''high Medicaid facility,'' as such terms are defined in § 411.362(c)(2) and (3). In the November 30, 2011 final rule (76 FR 74522), we gave examples of community input, such as documentation demonstrating that the hospital does not satisfy one or more of the data criteria or that the hospital discriminates against beneficiaries of Federal health programs; however, we noted that these were examples only and that we will not restrict the type of community input that may be submitted. If we receive timely comments from the community, we will notify the hospital, and the hospital will have 30 days after such notice to submit a rebuttal statement (§ 411.362(c)(5)(ii)).

A request for an exception to the facility expansion prohibition is considered complete as follows:

- If the request, any written comments, and any rebuttal statement include only HCRIS data: (1) The end of the 30-day comment period if CMS receives no written comments from the community; or (2) the end of the 30-day rebuttal period if CMS receives written comments from the community, regardless of whether the physician-owned hospital submitting the request submits a rebuttal statement (§ 411.362(c)(5)(i)).
- If the request, any written comments, or any rebuttal statement include data from an external data source, no later than: (1) 180 days after the end of the 30-day comment period if CMS receives no written comments from the community; and (2) 180 days after the end of the 30-day rebuttal period if CMS receives written comments from the community, regardless of whether the physician-owned hospital submitting the request submits a rebuttal statement (§ 411.362(c)(5)(ii)).

If we grant the request for an exception to the prohibition on expansion of facility capacity, the expansion may occur only in facilities on the hospital's main campus and may not result in the number of operating rooms, procedure rooms, and beds for which the hospital is licensed exceeding 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds (§ 411.362(c)(6)). The CMS decision to grant or deny a hospital's request for an exception to the prohibition on expansion of facility capacity must be published in the **Federal Register** in accordance with our regulations at § 411.362(c)(7).

III. Hospital Exception Request

As permitted by section 1877(i)(3) of the Act and our regulations at § 411.362(c), the following physician-owned hospital has requested an exception to the prohibition on expansion of facility capacity:

Name of Facility: Doctors Hospital at Renaissance.

Location: 5501 South McColl Road, Edinburg, Texas 78539.

Basis for Exception Request: Applicable Hospital.

We seek comments on this request from individuals and entities in the community in which the hospital is located. We encourage interested parties to review the hospital's request, which is posted on the CMS Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.* We especially welcome comments regarding whether the hospital qualifies as an applicable hospital. Under § 411.362(c)(2), an applicable hospital is a hospital that satisfies all of the following criteria:

- The hospital is located in a county that has a percentage increase in population that is at least 150 percent of the percentage increase in population of the State in which the hospital is located during the most recent 5-year period for which data are available as of the date that the hospital submits its request.
- The hospital has an annual percent of total inpatient admissions under Medicaid that is equal to or greater than the average percent with respect to such admissions for all hospitals located in the county in which the hospital is located during the most recent 12-month period for which data are available as of the date that the hospital submits its request. The most recent 12-month period for which data are available means the most recent 12-month period for which the data source used contains all data from the requesting hospital and each hospital located in the same county as the requesting hospital.
- The hospital does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries.
- The hospital is located in a State in which the average bed capacity in the State is less than the national average bed capacity during the most recent fiscal year for which HCRIS, as of the date that the hospital submits its request, contains data from a sufficient number of hospitals to determine a State's average bed capacity and the national average bed capacity.
- The hospital has an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located during the most recent fiscal year for which HCRIS, as of the date that the hospital submits its request, contains data from a sufficient number of hospitals to determine the requesting hospital's average bed occupancy rate and the relevant State's average bed occupancy rate.

Individuals and entities wishing to submit comments on the hospital's request should review the *DATES* and **ADDRESSES** sections above and state whether or not they are in the community in which the hospital is located.

IV. Collection of Information Requirements

This document does not impose information collection, recordkeeping, or third-party disclosure requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

V. Response to Public Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

Dated: April 27, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–11138 Filed 5–7–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–1696 and CMS–R–246]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 8, 2015:

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* The Appointment of Representative form is completed by beneficiaries, providers and suppliers, and any party seeking to appoint a representative to assist them with their initial determinations and filing appeals. This extension request proposes non-substantive changes to the form. *Form Number:* CMS–1696 (OMB control number: 0938–0950); *Frequency:* Once; *Affected Public:* Individuals and Households, Private sector (Business or other for-profits); *Number of Respondents:* 4,073,960; *Total Annual Responses:* 407,396; *Total Annual Hours:* 101,849. (For policy questions regarding this collection contact Katherine Hosna at 410–786–4993.)

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* The primary purpose of the Medicare consumer assessment of healthcare providers and systems (CAHPS) surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. The surveys also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. *Form Number:* CMS–R–246 (OMB control number: 0938–0732); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 799,650; *Total Annual Responses:* 799,650; *Total Annual Hours:* 277,740. (For policy questions regarding this collection contact Sarah Gaillot at 410–786–4637.)

Dated: May 5, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–11208 Filed 5–7–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 4, 2015, 10:00 a.m. to 4:30 p.m. EDT.

Place: Audio Conference Call and Adobe Connect Pro.

The ACCV will meet on Thursday, June 4, 2015, from 10:00 a.m. to 4:30 p.m. (EDT). The public can join the meeting by:

1. (Audio Portion) Calling the conference Phone Number 877–917–4913 and providing the following information:

Leaders Name: Dr. A. Melissa Houston.

Password: ACCV.

2. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

Call (301) 443–6634 or send an email to *aherzog@hrsa.gov* if you are having trouble connecting to the meeting site.

Agenda: The agenda items for the June 2015 meeting will include, but are not limited to: Updates from ACCV Adult Immunization Workgroup, the Division of Injury Compensation Programs (DICP), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

Public Comment: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, Division of Injury Compensation Programs (DICP), Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or email: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DICP will notify each presenter by email, mail, or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

For Further Information Contact: Anyone requiring information regarding the ACCV should contact Annie Herzog, DICP, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–6593, or email: *aherzog@hrsa.gov.*

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015–11097 Filed 5–7–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities and associated Health Professional Shortage Area (HPSA) scores, which will receive priority for the assignment of National Health Service Corps (NHSC) scholarship recipients available for service during the period October 1, 2015, through September 30, 2016, is posted on the NHSC Jobs Center Web site at *http://nhscjobs.hrsa.gov.* The NHSC Jobs Center includes sites that are approved for service by NHSC scholars; however, entities on this list may or may not have current job vacancies.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps members, entities must: (1) Have a current HPSA status of ''designated'' by the Division of Policy and Shortage Designation, Bureau of Health Workforce, HRSA as of January 1, 2015, for placements October 1, 2015, through December 31, 2015, or as of January 1, 2016, for placements January 1, 2016, through September 30, 2016; (2) not deny requested health care services or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program (CHIP); (3) enter into an agreement with the state agency that administers Medicaid and CHIP, accept assignment under Medicare, see all patients regardless of their ability to pay and post such policy, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit health professionals; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development, and training opportunities for Corps members.

Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, and/or oral health services that matches the discipline to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals (*e.g.* ancillary, inpatient, and specialty referrals) or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; (4) will experience a negative impact on the capacity to provide primary health services if a Corps member is not assigned to the entity, and (5) are a nonprofit or public entity to which Corps members may be assigned. Sites that provide specialized care, or a limited set of services, will receive greater scrutiny and may not receive approval as NHSC service sites. This may include clinics that focus on one disease or disorder or offer limited services, such as a clinic that only provides immunizations or a substance abuse clinic.

Entities at which NHSC scholars are performing their service obligations must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the state and site; and (2) the NHSC scholar assigned to the entity is engaged in the requisite amount of clinical practice, as defined below, to meet his or her service obligation:

Full-Time Clinical Practice

''Full-time clinical practice'' is defined as a minimum of 40 hours per week for at least 45 weeks per service year. The 40 hours per week may be compressed into no less than 4 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the full-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 32 of the minimum 40 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 8 hours per week must be spent providing direct patient care for patients at the approved practice site(s), providing direct patient care in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities.

Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C. Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 21 of the minimum 40 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 19 hours per week must be spent providing direct patient care for patients at the approved practice site(s), providing direct patient care in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Of the remaining 19 hours per week, no more than 8 hours can be spent performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 21 hours per week providing direct patient care, unless the teaching takes place in a HRSA-funded Teaching Health Center, as noted above.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH) that is certified by the Centers for Medicare & Medicaid Services (CMS) as a CAH under section 1820 of the Social Security Act, the full-time service requirements are as follows: At least 16 of the minimum 40 hours per week must be spent providing direct patient care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the NHSC's Customer Service Portal, during normally scheduled office hours. The remaining 24 hours of the minimum 40 hours per week must be spent providing direct patient care for patients at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Customer Service Portal, providing direct patient care in the CAH's skilled nursing facility or swing bed unit, or performing practice-related administrative activities. Of the remaining 24 hours per week, no more than 8 hours can be spent on practice-related administrative activities and teaching activities at the approved service site(s) shall not exceed 8 of the minimum 16 hours per week providing direct patient care, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C. Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

Half-Time Clinical Practice

''Half-time clinical practice'' is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for at least 45 weeks per service year. The 20 hours per week may be compressed into no less than 2 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the half-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 16 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 4 hours per week must be spent providing direct patient care for patients at the approved practice site(s), providing direct patient care in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed a total of 4 hours of the minimum 20 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 11 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 9 hours per week must be spent providing direct patient care for patients at the approved practice site(s), providing direct patient care in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a CAH, the half-time service requirements are as follows: At least 8 of the minimum 20 hours per week must be spent providing direct patient care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the Customer Service Portal, during normally scheduled office hours. The remaining 12 hours of the minimum 20 hours per week must be spent providing direct patient care for patients at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Practice Agreement, providing direct patient care in the CAH's skilled nursing facility or swing bed unit, or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

Half-time clinical practice is not an option for scholars serving their obligation through the Private Practice Option.

In addition to utilizing NHSC scholars in accordance with their full-time or half-time service obligation (as defined above), NHSC service sites are expected to: (1) Report to the NHSC all absences through clinician in-service verifications every 6 months, including those in excess of the authorized number of days (up to 35 full-time days per service year in the case of full-time service and up to 35 half-time days per service year in the case of half-time service); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC scholars (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report in the case of entities receiving HRSA grant support under Section 330 of the Public Health Service Act. The UDS report, as applicable, requires the site to assess the age, sex, race/ethnicity of, and provider encounter records for its user population and are aggregated at the organization level. Providers fulfilling NHSC commitments are approved to serve at a specific site or, in some cases, more than one site.

Evaluation and Selection Process

For a site to be eligible for placement of NHSC scholars, it must be approved by the NHSC following the site's submission of a site application. Processing of site applications from solo or group practices will involve additional screening, including a site visit by NHSC representatives. The site application approval is good for a period of 3 years from the date of approval.

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the

provision of primary health services in a HPSA with the greatest shortage. For the program year October 1, 2015, through September 30, 2016, HPSAs of greatest shortage for determination of priority for assignment of NHSC scholarship-obligated Corps personnel will be defined as follows: (1) Primary medical care HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholars who are primary care physicians, family nurse practitioners, physician assistants, or certified nurse midwives; (2) mental health HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholars who are psychiatrists or mental health nurse practitioners; and (3) dental HPSAs with scores of 16 and above are authorized for the assignment of NHSC scholars who are dentists. The NHSC has determined that a minimum HPSA score of 16 for all service-ready NHSC scholars will enable it to meet its statutory obligation to identify a number of entities eligible for placement at least equal to, but not greater than, twice the number of NHSC scholars available to serve in the 2015–2016 placement cycle.

The number of new NHSC placements through the Scholarship Program allowed at any one site is limited to one of the following provider types: Physician (MD/DO), nurse practitioner, physician assistant, certified nurse midwife, or dentist. The NHSC will consider requests for up to two scholar placements at any one site on a case-by-case basis. Factors that are taken into consideration include community need, as measured by demand for services, patient outcomes, and other similar factors. Sites wishing to request an additional scholar must complete an Additional Scholar Request form available at *http://nhsc.hrsa.gov/downloads/additionalrequestform.pdf.*

NHSC-approved sites that do not meet the authorized threshold HPSA score of 16 may post job openings on the NHSC Jobs Center; however, scholars seeking placement between October 1, 2015, and September 30, 2016, will be advised that they can only compete for open positions at sites that meet the threshold placement HPSA score of 16. While not eligible for scholar placements in 2015–2016, vacancies in HPSAs scoring less than 16 will be used by the NHSC in evaluating the HPSA threshold score for the next scholarship placement cycle.

Application Requests, Dates, and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of NHSC scholars may be updated periodically. New entities may be added to the NHSC Jobs Center during a site application competition. Likewise, entities that no longer meet eligibility criteria, including those sites whose 3-year approval as an NHSC service site has lapsed or whose HPSA designation has been withdrawn or proposed for withdrawal, will be removed from the priority listing.

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of entities that would receive priority in assignment of NHSC Scholars, or in support of a higher priority determination, must do so in writing no later than *June 8, 2015.* This information should be submitted to: Beth Dillon, Director, Division of Regional Operations, Bureau of Health Workforce, 1961 Stout Street, Denver, CO 80294. This information will be considered in preparing the final list of entities that are receiving priority for the assignment of scholarship-obligated Corps personnel.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 30, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–11049 Filed 5–7–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 7, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–New–60D for reference. Information Collection Request Title: State and Territorial Health Disparities Survey Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS) is requesting approval from the Office of Management and Budget (OMB) for a new data collection activity for the State and Territorial Health Disparities Survey (STHD Survey).

OMH has a long history of collaborating with states to improve minority health outcomes and reduce health and health care disparities. A strong partnership with state and territorial offices is a key to continue progress toward eliminating health disparities. To best facilitate continued partnerships, OMH needs information about the current activities, challenges, and resources within state and territorial offices of minority health. The State and Territorial Health Disparities Survey is intended to support OMH informational needs by collecting, organizing, and presenting a variety of information about states and U.S. territories, including the current status of minority health and health disparities, the organization and operation of state and territorial offices of minority health, and state/territorial implementation of federal standards and evidence-based practices designed to address disparities and improve minority health. The STHD Survey, which will focus on the activities, staffing, and funding of State Minority Health Entities, is part of a larger project to catalog the extent of health disparities and the activities underway to reduce them in each state and U.S. territory. The STHD Survey supports OMH's goals of working with states and territories to improve the health of racial and ethnic minority populations and eliminate health disparities. While existing, state/territorial-specific information sources (*e.g.,* quantitative data points available from the Agency for Healthcare Research and Quality's *National Healthcare Disparities Report State Snapshots*) offer important facts about the status of health disparities, they do not provide context around the efforts underway to reduce them.

Likely Respondents—Data will be collected using semi-structured telephone interviews with state/territorial minority health entity directors (or their designees) in approximately 54 states and territories (50 states plus the District of Columbia and the U.S. territories of Guam, Puerto Rico, and the U.S. Virgin Islands). The purpose of this interview is to collect qualitative information about state/territory program goals and activities, partnerships, and organizational structure, as well as quantitative data elements on staffing and funding.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondents	Average hours per response	Total burden hours
State and Territorial Survey	54	1	1.5	81
Total	54			81

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–11204 Filed 5–7–15; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0331–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0331 (which expires on August 21, 2015) through December 31, 2015. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 7, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0331–60D for reference.

Information Collection Request Title: Evaluation of the Responsible Fatherhood, Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting an evaluation of a demonstration program called Responsible Fatherhood, Marriage and Family Strengthening Grants for Incarcerated and Reentering Fathers and Their Partners (MFS–IP). This demonstration program, funded in 2006 by the Office of Family Assistance within the Administration for Children and Families (ACF), supported healthy marriage and responsible fatherhood activities among incarcerated and recently released fathers, their partners, and children. The MFS–IP evaluation assesses the effects of these activities by comparing relationship quality and stability, positive family interactions, family financial well-being, recidivism, and community connectedness between intervention and control groups.

Data collection for the entire evaluation is expected to last 7 years, from the time the first participant was enrolled in late 2008 until the last qualitative follow-back interview is administered. The burden table below includes completion of a set of follow-back qualitative interviews with a small group of respondents (previously approved under OMB No. 0990–0331). The current approval expires on August 21, 2015, and we are requesting an extension until December 31, 2015, to enable us to complete all of the interviews that have been previously approved by OMB under this information collection.

Need and Proposed Use of the Information: Primary data for the evaluation comes from in-person surveys with incarcerated and released fathers and their partners at baseline, 9, 18, and 34 month interviews and the qualitative follow-back. This qualitative follow-back is the focus of the current amendment request and it will only be conducted with a very small subsample of the original couples. As previously described and approved under OMB No. 0990–0331, being able to do additional qualitative follow-back with these cases will enable us to better understand how reentry success and family well-being are interrelated for the survey population, inform future research and evaluation with this population (particularly development and selection of appropriate quantitative measures of family relationship quality), and better identify meaningful leverage points for reentry intervention. This information will assist federal, state, and community policymakers and patrons in understanding what policy and programmatic supports could help to strengthen families and improve reentry outcomes in this population.

Likely Respondents: A small sub-sample of couples from the MFS–IP impact study sample, which includes 1,991 fathers incarcerated at the time of the baseline survey and 1,481 of their female partners.

Burden Statement: In this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The table below shows data collection burden, which remains unchanged from the data collection burden approved by OMB in our study renewal of August 2012.

Forms	Annualized number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total annualized burden hour
MFS–IP Follow-up Survey—Male (9 & 18 month)	321	1	1.5	481.5
MFS–IP Follow-up Survey—Female (9 & 18 month)	488.3	1	1.5	732.5
MFS–IP Follow-up Survey—Male (34 month and follow-back)	462.7	1	1.5	694
MFS–IP Follow-up Survey—Female (34 month and follow-back)	462.7	1	1.5	694
Totals				2,602

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Information Collection Clearance Officer.

[FR Doc. 2015–11207 Filed 5–7–15; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date:

May 27, 2015 9:00 a.m.–5:40 p.m. EST

May 28, 2015 8:30 a.m.–12:00 p.m. EST

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Rm. 705–A, Washington, DC 20024, (202) 690–7100.

Status: Open.

Purpose: The purpose of this meeting is to review NCVHS Status of Activities and to strategically plan for 2015 objectives and deliverables. The Committee will review its ongoing efforts in coordinating Subcommittee projects, and implementing its ACA designated Review Committee. Additional topics will include two action items for approval: (1) NCVHS's comments on the Hi-tech Interoperability Roadmap; and (2) an NCVHS Population Health report on Supporting Community Data Engagement. Further, the Committee will receive a demonstration of the E-Vitals demonstration project. The Working Group on HHS Data Access and Use will continue strategic discussions on Building a Framework for Guiding Principles for Data Access and Use.

The times shown above are for the full Committee meeting. Subcommittee issues will be included as part of the Full Committee schedule.

Contact Person for More Information: Substantive program information may be obtained from Debbie M. Jackson, Acting Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2339, Hyattsville, Maryland 20782, telephone (301) 458–4614. Summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: April 29, 2015.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2015–11045 Filed 5–7–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: June 1–2, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: June 2–3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic Research Enhancement Award.

Date: June 3, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer (detailee), Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

Date: June 4–5, 2015.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Los Angeles Airport Marriott, 5855 West Century Boulevard, Los Angeles, CA 90045.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.

Date: June 4–5, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Janet M Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: June 4–5, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street, Washington, DC 20001.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.

Date: June 4–5, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11065 Filed 5–7–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences.

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: Cures Acceleration Network Review Board.

Date: June 18, 2015.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Danilo A Tagle, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 992, Bethesda, MD 20892, 301–594–8064, *Danilo.Tagle@nih.gov*.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: June 18, 2015.

Open: 8:30 a.m. to 3:00 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 3:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Danilo A Tagle, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 992, Bethesda, MD 20892, 301–594–8064, *Danilo.Tagle@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 4, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11064 Filed 5–7–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting 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 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 9, 2015.

Open: 8:30 a.m. to 03:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 03:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Donna Brooks, Executive Officer, National Institutes of Health, National Institute on Minority Health and Heath Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135, *brooksd@mail.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both 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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, 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.

Dated: May 4, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11062 Filed 5–7–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, SBIR Contract Review.

Date: June 17, 2015.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 952, Bethesda, MD 20892, 301–451–4794, *hlastadj@mail.nih.gov*.

Dated: May 4, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–11063 Filed 5–7–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Announcement of Requirements and Registration for the Opioid Overdose Prevention Challenge

AGENCY: SAMHSA, HHS.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: In summarizing the challenge that will be issued by your agency, please answer the following four questions:

(1) What action is being taken?

The Substance Abuse and Mental Health Services Administration (SAMHSA) has issued a challenge to help prevent opioid overdose and support recovery through innovative, software-based solutions that help people know the signs of opioid use, understand what to do if a family member or friend overdoses on heroin or opioid pain medications, and support treatment for opioid addiction and recovery.

(2) Why is this action necessary?

There were 17,000 deaths from opioids in 2010, double the deaths in 2001. Use of prescription opioids has quadrupled. Death by opioid overdose is preventable. SAMHSA hopes to help prevent deaths from opioid overdose, and support treatment and recovery for individuals with an opioid substance use disorder.

(3) What is the objective of the challenge?

To prevent deaths from opioid overdose, and support treatment and recovery for individuals with an opioid substance use disorder by providing resources and information on understanding the signs of overdose, how to respond to an overdose, information about opioid use, treatment, and recovery.

(4) What is the intended effect of this action?

A reduction in the number of individuals dying from opioid overdose.

SAMHSA is seeking solutions to this problem through cost-effective, portable, technology-based products that effectively reach a diverse population of friends and family concerned about opioid use by someone they know. Technology-based products may include, but are not limited to, web applications, mobile apps, and Web sites.

DATES: The challenge starts on June 1, 2015 10:00 a.m. ET. The challenge ends on July 29, 2015 11:59 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Dina Passman, Public Health Advisor, SAMHSA/CSAT/PMB, 1 Choke Cherry Road, Room 5–1070, Rockville, MD, Phone: (240) 276–2854, Email: *Dina.Passman@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: Opioid Overdose Prevention.

Eligibility Rules for Participating in the Competition:

To satisfy the mandatory provisions of the Competes Act, use the following language:

''To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by [the issuing agency];

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual,

whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.''

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of SAMHSA.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Challenge Managers should include the following statement regarding consultation with Federal employees:

''An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.''

Registration Process for Participants

A. Registration

(i) Beginning on June 1, 2015 at 10:00 a.m. Eastern Time, visit CHALLENGE URL (the ''Competition Web site'') and click ''Sign Up'' to create a ChallengePost account, or click ''Log In'' and log in with an existing ChallengePost account. There is no charge for creating a ChallengePost account.

(ii) After a Contestant signs up on the Competition Web site a confirmation email will be sent to the email address provided by the Contestant. The Contestant should use the confirmation email to verify their email address.

(iii) Contestant should indicate their agreement in participating by clicking ''Register'' on the Competition Web site in order to receive important Competition updates.

(iv) In the event of a dispute pertaining to this Competition, the authorized account holder of the email address used to sign up for the ChallengePost account used to enter the Submission will be deemed to be the Contestant (in case of an individual) and the Contestant's Representative, in the case of a team or Organization. The ''authorized account holder'' is the natural person or legal entity assigned an email address by an Internet access provider, online service provider or other organization responsible for assigning email addresses for the domain associated with the submitted address. Contestants generally and potential winners may be required to show proof of being the authorized account holder.

Amount of the Prize: 1st prize: $10,000 cash; 2nd prize: $7,500 cash; 3rd prize: $5,000 cash.

Payment of the Prize: Prize payment will be paid by contractor.

Basis Upon Which Winner Will Be Selected:

A. All eligible Submissions will be judged by an expert panel of impartial judges (the ''Judges'') selected by the Sponsor. The internal panel will judge these Submissions on the criteria identified in these Official Rules to select finalist Submissions. Finalist Submissions will then be judged by the expert judging panel determined by the Sponsor. The judging panel is not required to test the Application and may choose to judge based solely on the text description and video provided in the Submission. The Sponsor and the Administrator reserve the right to divide and assign the criteria identified below in these Official Rules among different members of the internal and expert judging panels. The Sponsor and the Administrator reserve the right to substitute or modify the judging panel at any time for any reason.

B. All Judges shall be and remain fair and impartial. Any Judge may recuse him or herself from judging a Submission if the Judge, the Sponsor or the Administrator considers that it is inappropriate, for any reason, for the Judge to evaluate a specific Submission or group of Submissions.

C. A Contestant's likelihood of winning will depend primarily on the number and quality of all of the Submissions, as determined by the Judges using the criteria in these Official Rules. The judging period is August 5, 2015 at 10:00 a.m. Eastern Time through August 14, 2015 at 11:59 p.m. Eastern Time (the ''Judging Period'').

D. Criteria:

Judging Criteria:

(i) Quality of Performance (40 points) (includes how well the Application functions technically, and extent to which the Application responds to the Competition topic and target audience, and how thoroughly and clearly the solution utilizes the required assets);

(ii) Quality of User Experience (25 points) (includes visual aesthetic and ease of use);

(iii) Potential Impact (25 points) (includes the potential impact related to successfully informing target audiences about how to prevent opioid overdoses and provide a spectrum of additional support for the prevention, treatment and recovery of opioid misuse and abuse; and

(iv) Feasibility of Use (10 points) (includes how easily target audiences and members of the public can access and use the Application).

E. If deemed necessary by the judging panel, each of the top five finalists may be asked to participate in a virtual or in-person meeting with federal staff to discuss their Application and demonstrate its operation. The purpose of these meetings will be to further evaluate the Contestant's product, provide any additional information to SAMHSA, and clarify any concerns or questions raised by the review panel.

F. Tie Breakers. In the event of a tie between two or more Submissions, the tied Submission with the highest score in the first criterion listed above shall be deemed the higher scoring Submission. In the event any ties remain, this process will be repeated by comparing the tied Submissions' scores on the second, third, fourth, and fifth criterion listed above, respectively. If two or more Submissions are tied on all four criteria, the panel of Judges will vote on the tied submissions.

The COMPETES Act requires the basis on which a winner will be selected to be included in the **Federal Register** notice. 15 U.S.C. 3719(f)(5). The judges are required by the Act to select the winner or winners on this basis. 15 U.S.C. 3719(k)(1). Thus, to meet the requirements of the COMPETES Act, the **Federal Register** notice shall describe the basis on which a winner will be selected. The description should include the expected number of winners, if multiple winners are anticipated.

Additional Information

B. Submission

(i) Contestants must create a working software application which runs on a smartphone or tablet (iOS, Android, Blackberry, Windows Mobile, via a mobile browser or downloadable app), a Windows or Mac personal computer, or on a web browser (Chrome, Firefox, Internet Explorer, or Safari) (each an ''Application'').

(ii) During the Competition Submission Period, Contestant must visit the Competition Web site and confirm that he or she has or, if Contestant is a Representative, all members of their team or Organization have, read and agree to the Official

Rules. Then, Contestant must submit its Submission by providing:

a. The name of the Application;

b. a text description of the Application and how it functions;

c. a text description of testing instructions for the app;

d. at least one image (screenshot) of the working Application;

e. a link to a video uploaded to ChallengePost.com and YouTube.com that clearly demonstrates the Application's functionality and features (by walking through the Application);

f. the Application platform (iOS, Android, Mac Desktop, Windows Desktop, Web);

g. for web or mobile web Applications, a link to a Web site where the Application can be accessed free of charge;

h. for Mac or Windows desktop Applications, a zip file upload including appropriate installation files; and, if available, a link to a Web site or app store where the Application can be downloaded;

i. step-by-step testing instructions including the minimum operating system or web browser version required for testing and login instructions, if a login is required;

j. the submitter type (individual, team, or organization);

k. the Organization name, if the submitter is an Organization; and

l. the Contestant Representative's phone number.

(a–l above, are collectively a ''Submission'')

(iii) For sake of clarity, all parts of the Submission must be entered at the same time on the Competition Web site. All Submissions must be received by no later than 11:59 p.m. Eastern Time on July 29, 2015.

(iv) Once a Submission has been submitted and the Competition Submission Period has ended, a Contestant may not make any changes or alterations to the Submission until the end of the Judging Period. Contestants may save draft versions of their Submission before entering it on the Competition Web site.

(v) The Sponsor and/or the Administrator, at their sole discretion, may permit a Contestant to modify part of the Submission after the Competition Submission Deadline for the purpose of removing material that potentially infringes a third party mark or right, discloses personally identifiable information, or is otherwise inappropriate. The modified Submission must remain substantively the same as the original Submission with the only modification being what is permitted by the Sponsor and/or Administrator. Any modifications beyond what is permitted may result in disqualification.

(vi) Applications cannot be changed after the Competition Submission Period and before the end of the Judging Period, unless the Contestant has provided an installation file and testing instructions on the Enter an Application form on the Competition Web site.

5. Submission Requirements

A. Language Requirements

All Submission materials must be in English.

B. Text Description, Image and Video Requirements

(i) The text description must describe the Application's key features and functionality.

(ii) The image(s) must be photographs or screenshots of your working Application.

(iii) The video portion of the Submission:

a. Should be no longer than five (5) minutes;

b. must clearly demonstrate the Application's features and functionality; and

c. must not include music or other copyrighted material or use third party trademarks unless the Contestant has written permission to use such material.

(iv) If the video is primarily promotional rather than a demonstration of the Application's functionality and features (by walking through the Application), the Submission may be disqualified at the Sponsor's and/or Administrator's sole discretion.

C. Content Requirements

(i) The Submission must exclusively include information contained in the SAMHSA Opioid Overdose Toolkit section, Five Essential Steps for First Responders. The Submission content should encourage utilization of the five essential steps described in the SAMHSA Opioid Overdose Toolkit section, Five Essential Steps for First Responders. The submission must also present all of the assets provided in the DPT Asset File. Entries may not substantially alter the meaning, intent, or otherwise misrepresent the content from SAMHSA's Opioid Overdose Toolkit in whole or in part. The intention of this clause is to ensure that the integrity of the content is maintained.

(ii) The Submission must target friends, family, and caregivers of people using opioids, and/or people concerned about someone at risk for overdose.

(iii) Submission must not include an audio or visual performance, including but not limited to music, dance, or other performing art, third-party copyrighted material or trademarks, unless the Contestant has written permission to use such material.

(iv) The Submission must not use HHS's or SAMHSA's logos or official seals and must not claim endorsement.

Summer King,

Statistician.

[FR Doc. 2015–11099 Filed 5–7–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Announcement of Requirements and Registration for Offender Reintegration Toolkit Challenge

Authority: 15 U.S.C. 3719.

AGENCY: SAMHSA, HHS.

ACTION: Notice.

SUMMARY: (1) What action is being taken?

The Substance Abuse and Mental Health Services Administration (SAMHSA) has issued an Offender Reintegration Toolkit Challenge to help reduce recidivism and promote the public health and safety of communities.

(2) Why is this action necessary?

Studies show that people leaving the criminal justice system have a higher proportion of substance use and mental disorders than the general population. Treatment and recovery support, along with housing and employment are necessary to help newly released individuals address substance use and mental disorders and to keep them from reoffending. Easy to find information and resources can help them (and their family and friends) as they return to their communities.

(3) What is the objective of the challenge?

To reduce recidivism and provide resources and support for individuals leaving the criminal justice system and re-entering their communities.

(4) What is the intended effect of this action?

Family, friends, parole officers, and community service staff will help ex-offenders connect to resources for housing, employment, healthcare, and treatment and recovery for substance use and mental health disorders. By connecting them to necessary supports,

ex-offenders will successfully transition back into their communities and live successful, healthy lives.

SAMHSA is seeking solutions to this problem through cost-effective, portable, technology-based products that effectively reach a diverse population of ex-offenders being released from jail or prison, and the friends, family, parole officers, case managers, and service center staff who help them. Technology-based products may include, but are not limited to, web applications, mobile apps, and Web sites.

DATES: The challenge starts on June 1, 2015 10:00 a.m. ET. The challenge ends on July 29, 2015 11:59 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Dina Passman, Public Health Advisor, SAMHSA/CSAT/PMB, 1 Choke Cherry Road, Room 5–1070, Rockville, MD, Phone: (240) 276–2854, Email: *Dina.Passman@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: Reentry Resources for Individuals leaving the criminal justice system.

Eligibility Rules for Participating in the Competition:

''To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by [the issuing agency];

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.''

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of SAMHSA.

(7) [Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award and specifically requested to do so due to the competition design. Therefore, unless specifically requesting Federal grantees to compete, include the following text in your **Federal Register** notice: ''Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.'']

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

''An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.''

Registration Process for Participants

A. Registration

(i) Beginning on June 1, 2015 at 10:00 a.m. Eastern Time, visit CHALLENGE URL (the ''Competition Web site'') and click ''Sign Up'' to create a ChallengePost account, or click ''Log In'' and log in with an existing ChallengePost account. There is no charge for creating a ChallengePost account.

(ii) After a Contestant signs up on the Competition Web site a confirmation email will be sent to the email address provided by the Contestant. The Contestant should use the confirmation email to verify their email address.

(iii) Contestant should indicate their agreement in participating by clicking ''Register'' on the Competition Web site in order to receive important Competition updates.

(iv) In the event of a dispute pertaining to this Competition, the authorized account holder of the email address used to sign up for the ChallengePost account used to enter the Submission will be deemed to be the Contestant (in case of an individual) and the Contestant's Representative, in the case of a team or Organization. The ''authorized account holder'' is the natural person or legal entity assigned an email address by an Internet access provider, online service provider or other organization responsible for assigning email addresses for the domain associated with the submitted address. Contestants generally and potential winners may be required to show proof of being the authorized account holder.

Amount of the Prize: 1st prize: $10,000 cash; 2nd prize: $7,500 cash; 3rd prize: $5,000 cash.

Payment of the Prize: Prize payment will be paid by contractor.

Basis Upon Which Winner Will Be Selected

A. All eligible Submissions will be judged by an expert panel of impartial judges (the ''Judges'') selected by the Sponsor. The internal panel will judge these Submissions on the criteria identified in these Official Rules to select finalist Submissions. Finalist Submissions will then be judged by the expert judging panel determined by the Sponsor. The judging panel is not required to test the Application and may choose to judge based solely on the text description and video provided in the Submission. The Sponsor and the Administrator reserve the right to divide and assign the criteria identified below in these Official Rules among different members of the internal and expert judging panels. The Sponsor and the Administrator reserve the right to substitute or modify the judging panel at any time for any reason.

B. All Judges shall be and remain fair and impartial. Any Judge may recuse him or herself from judging a Submission if the Judge, the Sponsor or the Administrator considers that it is inappropriate, for any reason, for the Judge to evaluate a specific Submission or group of Submissions.

C. A Contestant's likelihood of winning will depend primarily on the number and quality of all of the Submissions, as determined by the Judges using the criteria in these Official Rules. The judging period is August 5, 2015 at 10:00 a.m. Eastern Time through August 14, 2015 at 11:59 p.m. Eastern Time (the ''Judging Period '').

D. Criteria:

Judging Criteria:

(i) Quality of Performance (40 points) (includes how well the Application functions technically, and extent to which the Application responds to the Competition topic and target audience, and how thoroughly and clearly the solution utilizes the required assets);

(ii) Quality of User Experience (25 points) (includes visual aesthetic and ease of use);

(iii) Potential Impact (25 points) (includes the potential impact related to successfully informing target audiences about the resources available to them for employment, housing, treatment and recovery;) and

(iv) Feasibility of Use (10 points) (includes how easily target audiences and members of the public can access and use the Application).

E. If deemed necessary by the judging panel, each of the top five finalists may be asked to participate in a virtual or in-person meeting with federal staff to discuss their Application and demonstrate its operation. The purpose of these meetings will be to further evaluate the Contestant's product, provide any additional information to SAMHSA, and clarify any concerns or questions raised by the review panel.

F. Tie Breakers. In the event of a tie between two or more Submissions, the

tied Submission with the highest score in the first criterion listed above shall be deemed the higher scoring Submission. In the event any ties remain, this process will be repeated by comparing the tied Submissions' scores on the second, third, fourth, and fifth criterion listed above, respectively. If two or more Submissions are tied on all four criteria, the panel of Judges will vote on the tied submissions.

Additional Information

Submission

(i) Contestants must create a working software application which runs on a smartphone or tablet (iOS, Android, Blackberry, Windows Mobile, via a mobile browser or downloadable app), a Windows or Mac personal computer, or on a web browser (Chrome, Firefox, Internet Explorer, or Safari) (each an ''Application'').

(ii) During the Competition Submission Period, Contestant must visit the Competition Web site and confirm that he or she has or, if Contestant is a Representative, all members of their team or Organization have, read and agree to the Official Rules. Then, Contestant must submit its Submission by providing:

a. The name of the Application;

b. a text description of the Application and how it functions;

c. a text description of testing instructions for the app;

d. at least one image (screenshot) of the working Application;

e. a link to a video uploaded to ChallengePost.com and YouTube.com that clearly demonstrates the Application's functionality and features (by walking through the Application);

f. the Application platform (iOS, Android, Mac Desktop, Windows Desktop, Web);

g. for web or mobile web Applications, a link to a Web site where the Application can be accessed free of charge;

h. for Mac or Windows desktop Applications, a zip file upload including appropriate installation files; and, if available, a link to a Web site or app store where the Application can be downloaded;

i. step-by-step testing instructions including the minimum operating system or web browser version required for testing and login instructions, if a login is required;

j. the submitter type (individual, team, or organization);

k. the Organization name, if the submitter is an Organization; and

l. the Contestant Representative's phone number.

(a-l above, are collectively a ''Submission'')

(iii) For sake of clarity, all parts of the Submission must be entered at the same time on the Competition Web site. All Submissions must be received by no later than 11:59 p.m. Eastern Time on July 29, 2015.

(iv) Once a Submission has been submitted and the Competition Submission Period has ended, a Contestant may not make any changes or alterations to the Submission until the end of the Judging Period. Contestants may save draft versions of their Submission before entering it on the Competition Web site.

(v) The Sponsor and/or the Administrator, at their sole discretion, may permit a Contestant to modify part of the Submission after the Competition Submission Deadline for the purpose of removing material that potentially infringes a third party mark or right, discloses personally identifiable information, or is otherwise inappropriate. The modified Submission must remain substantively the same as the original Submission with the only modification being what is permitted by the Sponsor and/or Administrator. Any modifications beyond what is permitted may result in disqualification.

(vi) Applications cannot be changed after the Competition Submission Period and before the end of the Judging Period, unless the Contestant has provided an installation file and testing instructions on the Enter an Application form on the Competition Web site.

Submission Requirements

A. Language Requirements

All Submission materials must be in English.

B. Text Description, Image and Video Requirements

(i) The text description must describe the Application's key features and functionality.

(ii) The image(s) must be photographs or screenshots of your working Application.

(iii) The video portion of the Submission:

a. Should be no longer than five (5) minutes;

b. must clearly demonstrate the Application's features and functionality; and

c. must not include music or other copyrighted material or use third party trademarks unless the Contestant has written permission to use such material.

(iv) If the video is primarily promotional rather than a demonstration of the Application's functionality and features (by walking through the Application), the Submission may be disqualified at the Sponsor's and/or Administrator's sole discretion. Challenge managers should include any additional information in this section that would be relevant for participants. For example, it could include background information about the data sources or materials that should be accessed for purposes of this challenge, treatment of intellectual property rights if it is an area the agency plans to negotiate at a later point in the challenge competition, or background information about related initiatives or challenges.

Content Requirements

(i) The Submission must exclusively include information specified in the asset file. This information must include, but not be limited to, the SAMHSA Opioid Overdose Toolkit. Entries may not substantially alter the meaning, intent, or otherwise misrepresent the content from SAMHSA's Opioid Overdose Toolkit or other assets in whole or in part. The intention of this clause is to ensure that the integrity of the content is maintained.

(ii) The Submission must target individuals, friends, family, and people who work in organizations assisting people leaving the criminal justice system and re-entering their community. The submission must be developed based on the use cases (included in the materials) as their target users.

(iii) Submission must not include an audio or visual performance, including but not limited to music, dance, or other performing art, third-party copyrighted material or trademarks, unless the Contestant has written permission to use such material.

(iv) The Submission must not use HHS's or SAMHSA's logos or official seals and must not claim endorsement.

Summer King,

Statistician.

[FR Doc. 2015–11098 Filed 5–7–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236–9853; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; VA: Ms. Jessica L. Kaplan, Department of Veteran Affairs, 810 Vermont Ave. NW., (0031E), Washington, DC 20420 (These are not toll-free numbers).

Dated: April 30, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance, Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/08/2015

Suitable/Available Properties

Building

California

Lab/Engineer Shop
Hwy. 96 to Lower Airport Rd.
Happy Camp CA 96097
Landholding Agency: Agriculture
Property Number: 15201520006
Status: Unutilized
Directions: Klamath National Forest
Comments: off-site removal; 38+yrs. old; 978 sq. ft.; storage; vacant 120+mos.; building is gutted; no future agency need; prior approval to gain access is required; contact Agriculture for more information.

Happy Camp Lower Station Office
64312 2nd Avenue
Happy Camp CA 96039
Landholding Agency: Agriculture
Property Number: 15201520008
Status: Unutilized
Comments: off-site removal; 41+yrs.old; 546 sq. ft.; vacant 24+mos.; storage; no future agency need; contact Agriculture for more information.

Oregon

W2606 Tree Cooler (1067.005651)
38500 Hwy 97 N
Chiloquin OR 97624
Landholding Agency: Agriculture
Property Number: 15201520010
Status: Excess
Comments: off-site removal only; 28+ years; 762 sq. ft.: tree cooler; vacant 120+ months; contact Agriculture for more information.

W2603 Tree Cooler (1066.005651)
38500 Hwy 97 N
Chiloquin OR 97624
Landholding Agency: Agriculture
Property Number: 15201520011
Status: Excess
Comments: off-site removal only; 36+ years old; 343 sq. ft.; Tree cooler; vacant 120+ months; contact Agriculture for more information.

W1027 Chemult 2BR Residence (1018.005651)
110500 Hwy 97 N
Chemult OR 97731
Landholding Agency: Agriculture
Property Number: 15201520012
Status: Excess
Comments: off-site only; 52+ years old; 1,014 sq. ft.; 48+ months vacant; may be difficult to move; contact Agriculture for more information.

W1038 Chemult 2BR Residence

110500 Hwy 97 N
Chemult OR 97731
Landholding Agency: Agriculture
Property Number: 15201520013
Status: Excess
Directions: (1022.005651) 1397100
Comments: off-site removal only; 48+yrs. old; 1,046 sq. ft.; vacant 72+mos.; wood; may be complicated to move; contact Agriculture for more information.

W1037 Chemult 3BR Residence
110500 Hwy 97 N
Chemult OR 97731
Landholding Agency: Agriculture
Property Number: 15201520014
Status: Excess
Directions: (1021.005651) 1397100
Comments: off-site removal only; 47+yrs. old; 1,132 sq. ft.; 72+mos. vacant; wood; may be difficult to move; contact Agriculture for more information.

2606 SL Storage Shed
65600 Hwy 31
Silver Lake OR 97638
Landholding Agency: Agriculture
Property Number: 15201520015
Status: Excess
Directions: (1105.004681) 0765804
Comments: off-site removal; 37+yrs.old; 1,049 sq. ft.; 72+mos. vacant; storage; contact Agriculture for more information.

1214 SL Trailer 14X70 Tamarack
65600 Hwy 31
Silver Lake OR 97638
Landholding Agency: Agriculture
Property Number: 15201520017
Status: Excess
Directions: (1088.004681) 0765804
Comments: off-site removal only; 35+yrs. old; 924 sq. ft.; vacant 36+mos.; residential; contact Agriculture for more information.

(1209) SL Trailer
14X70 Homette
65600 Hwy 31
Silver Lake OR 97638
Landholding Agency: Agriculture
Property Number: 15201520018
Status: Excess
Directions: (1304.004681) 0765804
Comments: off-site removal only; 34+yrs. old; 891 sq. ft.; vacant 36+mos.; residence; contact Agriculture for more information.

2506 Pai Thomas Creek Gas House
T.37S.R.18E Section 4 NWNW
Paisley OR 97630
Landholding Agency: Agriculture
Property Number: 15201520019
Status: Excess
Directions: (1324.004681) 0765800
Comments: off-site removal only; 55+yrs. old; 96 sq. ft.; 120+ mos. vacant; storage; contact Agriculture for more information.

1320 Pai Thomas Creek WC Barracks
T.37S.R.18E Section 4 NWNW
Paisley OR 97630
Landholding Agency: Agriculture
Property Number: 15201520020
Status: Excess
Directions: (1315.004681) 0765800
Comments: off-site removal only; 57+yrs. old; 1,600 sq. ft.; 120+ mos. vacant; bunkhouse; poor conditions; may be difficult to move; contact Agriculture for more information.

2200 Pai Thomas Creek WC Warehouse
TT.37S.R.18E. Section 4 NWNW
Paisley OR 97630
Landholding Agency: Agriculture
Property Number: 15201520021
Status: Excess
Directions: (1321.004681) 0765800
Comments: off-site removal only; 39+yrs. old; 1,223 sq. ft.; vacant 120+ mos.; shed; poor conditions; may be difficult to move; contact Agriculture for more information.

2207 LV Geotech Lab & Shop
18049 Hwy 395
Lakeview OR 97630
Landholding Agency: Agriculture
Property Number: 15201520022
Status: Excess
Directions: (1153.004681) 0765802
Comments: off-site removal only; 77+ yrs. old; 5,184 sq. ft.; vacant 120+ mos.; storage; may be difficult to move; contact Agriculture for more information.

2014 LV Conference Building
18049 Hwy 395
Lakeview OR 97630
Landholding Agency: Agriculture
Property Number: 15201520023
Status: Excess
Directions: (1149.004681) 0765802
Comments: off-site removal only; 48+ yrs. old; 1,222 sq. ft.; vacant 120+ mos.; storage; wood; may be difficult to move; contact Agriculture for more information.

Washington

Building 8/Mann-Grandstaff
VA Medical Center
4815 N. Assembly St.,
Spokane WA 99205
Landholding Agency: VA
Property Number: 97201520002
Status: Unutilized
Directions: GSA Inventory No: WA–00021–S
Comments: off-site removal only; no future agency need; difficult to relocate; 65+ yrs.-old; 2,950 sq. ft.; office space; 3+ mons. vacant; repairs needed; asbestos; contact VA for more information.

Building 4/Mann- Grandstaff
VA Medical Center
4815 N. Assembly St.,
Spokane WA 99205
Landholding Agency: VA
Property Number: 97201520003
Status: Excess
Directions: GSA Inventory No: WA–00021–S
Comments: off-site removal only; difficult to relocate; 65+ yrs.-old; 2,500 sq. ft.; asbestos; contact VA for more information.

Building 32/Mann-Grandstaff
VA Medical Center
4815 N. Assembly
Spokane WA 99205
Landholding Agency: VA
Property Number: 97201520004
Status: Unutilized
Directions: GSA Inventory Number: WA–00021–S
Comments: off-site removal only; difficult to relocate; 5,000 sq. ft.; no future agency need; vacant 12+ mons.; mold/sick bldg. syndrome; contact VA for more information.

Unsuitable Properties

Building

California

Facility #1636
112 North Wolfe Ave.
Edwards Air Base CA 93524
Landholding Agency: Air Force
Property Number: 18201520002
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Virginia

Building 509
2600 Tarawa Court
Virginia Beach VA 23459
Landholding Agency: Navy
Property Number: 77201520003
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

4 Building
Joint Expeditionary Base Little Greek
Virginia Beach VA 23459
Landholding Agency: Navy
Property Number: 77201520004
Status: Excess
Directions: Bldgs. 3165B; 3165E; 3174; 3165
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Land

Georgia

Proposed Photovoltaic (PV) Sites
Marine Corps Logistics Base
Atlanta GA 31704
Landholding Agency: Navy
Property Number: 77201520005
Status: Underutilized
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Hawaii

West Loch
Commander Navy Region Hawaii
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77201520006
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New York

Former ELM Directional Finder
N. of Haldeman Hollow Rd.
Big Flats NY 14903
Landholding Agency: GSA
Property Number: 54201520004
Status: Excess
GSA Number: 1–U–NY–0990–AA
Directions: Disposal Agency: GSA
Land Holding Agency: Federal Aviation Admin.
Comments: property is not accessible because it is landlocked and can only be reached

by crossing private property and there is no established right or means of entry.
Reasons: Not accessible by road

[FR Doc. 2015–10506 Filed 5–7–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15EE000101100]

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on June 9–10, 2015 at the South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240. The meeting will be held in the first floor Auditorium. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee (FGDC) on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

- Leadership Dialogue
- FGDC Report (Geospatial Platform, NSDI Strategic Plan, National Geospatial Data Asset Management)
- Crowd-Sourced Geospatial Data
- Geospatial Privacy
- 3D Elevation Program
- Landsat
- NSDI Communications and Outreach
- Subcommittee Activities

The meeting will include an opportunity for public comment on June 10. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Lucia Foulkes at the U.S. Geological Survey (703–648–4142, *lfoulkes@usgs.gov*). Registrations are due by June 5, 2015. While the meeting will be open to the public, registration is required for entrance to the South Interior Building, and seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5:30 p.m. on June 9 and from 8:30 a.m. to 4:00 p.m. on June 10.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *www.fgdc.gov/ngac.*

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2015–11203 Filed 5–7–15; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[ONRR–2012–0003 DS63602000 DR2PS0000.PX8000 156D0102R2]

Notice of Request for Nominees for the U.S. Extractive Industries Transparency Initiative Advisory Committee

AGENCY: Office of Natural Resources Revenue Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Interior) is seeking nominations for individuals to be Committee members or alternates on the U.S. Extractive Industries Transparency Initiative Advisory Committee (Committee). We seek nominees who can represent stakeholder constituencies from government, civil society, and industry so that we can fill current vacancies and create a roster of candidates in case future vacancies occur.

DATES: Submit nominations by June 30, 2015.

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

- Mail or hand-carry nominations to Ms. Rosita Compton Christian; Department of the Interior; 1849 C Street NW., MS 4211, Washington, DC 20240.
- Email nominations to *USEITI@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Rosita Compton Christian at (202) 208–0272 or (202) 513–0597; fax (202) 513–0682; email *Rosita.ComptonChristian@onrr.gov* or *useiti@ios.doi.gov;* or via mail at the Department of the Interior; 1849 C Street NW., MS 4211; Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Interior established the Committee on July 26, 2012, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and with the concurrence of the General Services Administration. The Committee serves as the U.S. Extractive Industries Transparency Initiative Multi-Stakeholder Group and advises the Secretary of the Interior on design and implementation of the initiative.

The Committee does the following:

- Oversees the U.S. implementation of the Extractive Industries Transparency Initiative (EITI), a global standard for governments to publicly disclose revenues received from oil, gas, and mining assets belonging to the government, with parallel public disclosure by companies of payments to the government (such as royalties, rents, bonuses, taxes, or other payments)
- Develops and recommends to the Secretary a fully-costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints; this plan will be developed in consultation with key EITI stakeholders and published upon completion
- Provides opportunities for collaboration and consultation among stakeholders
- Advises the Secretary and posts for consideration by other stakeholders proposals for conducting long-term oversight and other activities necessary to achieve and maintain EITI-compliant status

The Committee consists of representatives from three stakeholder sectors. The sectors are as follows:

- Industry—including non-Federal representatives from the extractive industry—including oil, gas, and mining companies and industry-related trade associations.
- Civil society, including organizations with an interest in extractive industries, transparency, and government oversight; members of the public; and public and/or private investors.
- Government, including Federal, State, local, and Tribal governments and individual Indian mineral owners.

In addition to honoring the EITI principle of self-selection within the stakeholder sector, we will consider the following criteria when making final selections:

- Understanding of and commitment to the EITI process
- Ability to collaborate and operate in a multi-stakeholder setting
- Access to and support from a relevant stakeholder constituency
- Basic understanding of the extractive industry and/or revenue collection or willingness to be educated on such matters

Nominations should include a resume providing relevant contact information and an adequate description of the

nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and to permit the Department of the Interior to contact a potential member.

Parties are strongly encouraged to work with and within stakeholder sectors (including industry, civil society, and government sectors, as the EITI process defines) to jointly consider and submit nominations that, overall, reflect the diversity and breadth of their sector. Nominees are strongly encouraged to include supporting letters from constituents, trade associations, alliances, and/or other organizations that indicate the support by a meaningful constituency for the nominee.

Individuals who are Federally registered lobbyists are ineligible to serve on FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

The Committee will meet quarterly or at the request of the Designated Federal Officer. Non-Federal members of the Committee will serve without compensation. However, we may pay the travel and per diem expenses of Committee members, if appropriate, under the Federal Travel Regulations.

To learn more about USEITI please visit the official Web site at *www.doi.gov/eiti.*

Dated: April 27, 2015.

Paul A. Mussenden,

Deputy Assistant Secretary, Natural Resources Revenue Management.

[FR Doc. 2015–11060 Filed 5–7–15; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–18188; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 18, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 26, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 27, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Garland County

First Lutheran Church, 1700 Central Ave., Hot Springs, 15000282

Hot Spring County

Billings—Cole House, 725 E. Page Ave., Malvern, 15000283

Izard County

Vest Cemetery, 335 Vest Cemetery Rd., Boswell, 15000284

Mississippi County

Wilson Community House, 10 Lake Dr., Wilson, 15000285

Wilson High School Gymnasium, Main & Lee Sts., Wilson, 15000286

Pulaski County

Esso Standard Oil Service Station, (Arkansas Highway History and Architecture MPS) 1600 W. 3rd St., Little Rock, 15000287

Washington County

Durst, David and Mary Margaret, House, 857 Fairview Dr., Fayetteville, 15000288

Fayetteville Fire Department Fire Station 1, 303 W. Center, Fayetteville, 15000289

Fayetteville Fire Department Fire Station 3, 4140 S. School St., Fayetteville, 15000290

Prairie Grove Airlight Outdoor Telephone Booth, SW. corner of E. Douglas and Parker Sts., Prairie Grove, 15000291

Prairie Grove Cemetery Historic Section, Bounded by Kate Smith, Buchanan, & Parks Sts., Prairie Grove, 15000292

Yell County

Grace, Dr. John, House and Hospital, 100 North Rd., Belleville, 15000293

COLORADO

Larimer County

Downtown Loveland Historic District, Roughly bounded by Railroad & Jefferson Aves., alleys between 3rd & 4th Sts. & 4th & 5th Sts., Loveland, 15000281

IOWA

Scott County

Royal Neighbors of America National Home Historic District, 4760 Rockingham Rd., Davenport, 15000294

MICHIGAN

Clinton County

Grist Mill Bridge, Dam and Mill Site, Upton Rd. from Island Rd. to Maple R., Duplain Township, 15000295

MISSISSIPPI

Grenada County

Confederate Redoubt, (Grenada MRA) Springhill Rd., Grenada, 15000296

Harrison County

East Howard Avenue Historic District, (Biloxi MPS (AD)) Roughly bounded by Dukate, Nixon, Jefferson & Holley Sts., Peyton Dr. & Comfort Pl., Biloxi, 15000297

Lameuse Street Historic District, (Biloxi MPS (AD)) Roughly Lameuse St., Biloxi, 15000301

Upper West Central Historic District, (Biloxi MPS (AD)) Roughly bounded by Hopkins Blvd., CSXRR, Iroquois, Esposito & Division Sts., Biloxi, 15000302

Montgomery County

Winona Historic District, Roughly bounded by Oakwood Cemetery, N. Applegate, Raper, Railroad, Branch & Mortimer Sts., Speedway & S. Union Aves., Winona, 15000303

MISSOURI

St. Louis Independent City

Biddle Street Market, 1211–19 N. Tucker Blvd., St. Louis (Independent City), 15000304

Bronson, Dr. George Ashe, House, 3201 Washington St., St. Louis (Independent City), 15000305

Shriners' Hospital for Crippled Children, 700–728 S. Euclid & 4565 Clayton Ave., St. Louis (Independent City), 15000306

Stouffer's Riverfront Inn, 200 S. 4th St., St. Louis (Independent City), 15000307

NEW YORK

Chemung County

Clinton—Columbia Historic District, 505–605 College Ave., 300–431 W. Clinton, 608–612 Columbia, 348–354 W. 4th & 513–602 Davis Sts., Elmira, 15000308

Kings County

Lehigh Valley Railroad Barge 79, 290 Conover St., Brooklyn, 15000309

Monroe County

Arvine Heights Historic District, 15–120 Arvine Heights, Rochester, 15000310

PUERTO RICO

Hormigueros Municipality

Casa Marquez, Segundo Ruiz Belvis 8, Hormigueros, 15000311

[FR Doc. 2015–11071 Filed 5–7–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913.7000000]

Notice of Public Meeting for the Glen Canyon Dam Adaptive Management Work Group; Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Reclamation published a notice in the **Federal Register** on April 17, 2015 (80 FR 21261) announcing an open public WebEx meeting of the Glen Canyon Dam Adaptive Management Work Group. The date of May 28, 2014 for the WebEx meeting was incorrect. The correct date for the meeting is May 28, 2015. All other information regarding the meeting remains the same.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3807; email at *gknowles@usbr.gov.*

Dated: May 4, 2015.

Glen Knowles,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2015–11133 Filed 5–7–15; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01113000, XXXR0680R1, RR.R0336A1R.7WRMP0032]

Notice of Availability of a Final Environmental Impact Statement for the Cle Elum Pool Raise Project, Kittitas County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation and Washington State Department of Ecology, as joint lead agencies, have made available the Cle Elum Pool Raise Project Final Environmental Impact Statement (EIS). The Final EIS describes the potential environmental effects of the No Action Alternative and four action alternatives to modify the existing radial gates in the Cle Elum Dam spillway to provide an additional 14,600 acre-feet of storage capacity in Cle Elum Reservoir, put the additional stored water to beneficial use, provide for shoreline protection of the reservoir, and implement necessary environmental mitigation. The Final EIS also includes responses to all public comments on the Draft EIS.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after the Environmental Protection Agency publishes the notice of availability of the Final EIS in the **Federal Register**. Following the 30-day wait period, Reclamation may complete a Record of Decision (ROD).

ADDRESSES: Send requests for copies of the Final EIS to Ms. Candace McKinley, Bureau of Reclamation, 1917 Marsh Road, Yakima, WA 98901, 509–575–5848, ext. 613, or via email to *cepr@usbr.gov.* The Final EIS is also accessible from the following Web site: *http://www.usbr.gov/pn/programs/eis/cleelumraise/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Candace McKinley, 509–575–5848, ext. 613; or by email at *cepr@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Final EIS documents the potential direct, indirect, and cumulative physical, biological, and socioeconomic environmental effects that may result from increasing the reservoir storage capacity.

The Final EIS evaluates the construction and operation of modified radial gates at Cle Elum Dam to enable a 3-foot raise in the reservoir pool (14,600 acre-feet additional storage capacity), use of the additional stored water to improve instream flows or to supplement the Yakima Project Total Water Supply Available, raising the height of three existing dikes, raising the height of access roads and facilities at the U.S. Forest Service Cle Elum River Campground and Wish-Poosh boat ramp, implementing shoreline protection to reduce erosion, and acquiring private property and easements to accommodate shoreline protection. The primary project objectives are to: (1) Fulfill the intent of the congressional authorization given in sections 1205 and 1206, Title XII, Yakima River Basin Water Enhancement Project (YRBWEP), of Public Law 103–434, Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; (2) improve aquatic resources for fish habitat, rearing, and migration in the Cle Elum and upper Yakima Rivers; and (3) (if authorized by Congress) help meet demands for agricultural water supply.

The primary study area encompasses the Cle Elum Reservoir, the adjacent area that would be inundated by the proposed 3-foot raise in the full-pool reservoir level, and areas that could be directly affected by construction or operations-related activities, including the spillway, dikes, adjacent lands, and public recreation resources. The extended study area includes the Cle Elum and Yakima rivers downstream from Cle Elum Dam; lands, municipalities, and instream uses served by Cle Elum and Yakima rivers water rights; and the larger Yakima Project area.

A ROD will identify all the alternatives considered, including the environmentally preferable alternative and the action selected for implementation, if they are not the same. A ROD will also discuss the factors and rationale used in making the decision; provide information on the adopted means to avoid, minimize and compensate for environmental impacts; describe any monitoring and enforcement program to ensure that adopted mitigation is accomplished; and address any significant comments received on the Final EIS.

Authority

The Cle Elum Pool Raise Project is authorized in sections 1205 and 1206 of Title XII of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994.

Public Review of Final EIS

The Final EIS is available for public inspection at the following locations:

1. Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N Curtis Road, Boise, Idaho 83706.

2. Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, Washington 98901.

3. Washington State Department of Ecology, 15 W. Yakima Avenue, Suite 200, Yakima, Washington 98902.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Dated: May 4, 2015.

Lorri J. Lee,

Regional Director, Pacific Northwest Region.

[FR Doc. 2015–11134 Filed 5–7–15; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Automated Teller Machines and Point of Sale Devices and Associated Software Thereof, DN 3068;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Global Cash Access, Inc. on May 4, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated teller machines and point of sale devices and associated software thereof. The complaint names as respondents NRT Technology Corp. of Canada and NRT Technologies, Inc. of Las Vegas, NV. The complainant requests that the Commission issue a permanent limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3068'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 5, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–11113 Filed 5–7–15; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–907]

Certain Vision-Based Driver Assistance System Cameras and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bond issued in this investigation on April 27, 2015. Comments should address whether the recommended relief in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to any recommended order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to any recommended order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to any recommended order within a commercially reasonable time; and

(v) explain how any recommended order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 3, 2015.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 907'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: May 4, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–11050 Filed 5–7–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0020]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of an Approved Collection; Office on Violence Against Women Solicitation Template

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** (80 FR 11468), on March 3, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 8, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a

copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney Advisor, Office on Violence Against Women, 145 N Street NE., Washington, DC 20530 (phone: 202–514–5430). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Office on Violence Against Women Solicitation Template.

(3) *Agency form number:* Form Number: 1122–0020.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: The affected public includes applicants to OVW grant programs authorized under the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. These include States, Territories, Tribes or unit of local governments; State, territorial, tribal or unit of local governmental entities; institutions of higher education including colleges and universities; tribal organizations; Federal, State, tribal, territorial or local courts or court-based programs; State sexual assault coalitions, State domestic violence coalitions; territorial domestic violence or sexual assault coalitions; tribal coalitions; tribal organizations; community-based organizations and non-profit, nongovernmental organizations.

Abstract: The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes the requirements for eligibility; instructs an applicant on the necessary components of an application under a specific grant program (*e.g.* project activities and timeline, proposed budget); and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collect annually from the approximately 1,800 respondents (applicants to the OVW grant programs). The public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare a narrative, budget and other materials for the application as well to coordinate with and develop a memorandum of understanding with requisite project partners.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 54,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: May 4, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–11047 Filed 5–7–15; 8:45 am]

BILLING CODE 4410–FX–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–032)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to guide the development of space technologies, has released a draft version of the 2015 NASA Technology Roadmaps to the public. These Roadmaps, which expand and update the Technology Roadmaps released in 2012, consist of an introductory section and fifteen (15) distinct Technology Area roadmaps, which contain over 1,250 technology candidate snapshots. NASA is using specific questions to enable comment on the draft 2015 NASA Technology Roadmaps in a broad spectrum of areas.

DATES: Consideration will be given to all comments received within 30 days from the date of this publication. The Web site, *2015nasatechroadmaps.taurigroup.com,* will open for comments on May 11, 2015 and will close on June 10, 2015. No submissions will be accepted after June 10, 2015.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or instructions should be directed to Faith Chandler, Director Strategic Integration, Office of the Chief Technologist, NASA Headquarters, 300 E Street SW., Washington, DC 20546, at *HQ-TechRoadmaps@mail.nasa.gov.*

Title: NASA Technology Roadmap Comment.

Abstract: NASA is continually looking for opportunities to advance U.S. technology. NASA's technology development activities expand the frontiers of knowledge and capabilities in aeronautics, science, and space, which creates markets and products for U.S. industry, and supports other government agencies and academia.

The draft 2015 NASA Technology Roadmaps expand and update the original 2012 roadmaps, providing extensive details about anticipated NASA mission capability and associated technology development needs. NASA believes sharing these documents with the broader community will increase awareness, generate innovative solutions to provide the capabilities for space exploration and scientific discovery, and inspire others to get involved in America's space program.

The five questions on the Web site enable comment on the draft 2015

NASA Technology Roadmaps in a broad spectrum of areas, to describe partnership opportunities and needs, and to identify NASA technology development activities that will promote entrepreneurship, innovation, and development of new businesses. Those questions are:

Question 1: Confirm validity or propose a change to the description of state of the art.

Question 2: Identify interest in the use of a technology candidate for a space application.

Question 3: Identify interest in the use of a technology candidate for a non-space application.

Question 4: Describe interest in potential partnership (co-funding development) of a technology candidate.

Question 5: Suggest other changes to the draft 2015 NASA Technology Roadmaps.

When arriving on the home page of the Web site titled: ''*2015 NASA Technology Roadmaps: Request for Information Portal''* located at: *2015nasatechroadmaps.taurigroup.com,* the reviewer will be requested to register. Registration requires completing the following fields:

- Full name (maximum 200 characters),
- Organization (maximum 500 characters),
- Country in which organization is based (maximum 200 characters),
- Organization type (selection button),
- Email Address (maximum 200 characters),
- Brief description of the expertise (maximum 5,000 characters).

The reviewer should *NOT* include information of a confidential nature, such as sensitive personal information or proprietary information.

Cheryl E. Parker,

Federal Register Liaison Officer.

[FR Doc. 2015–11209 Filed 5–7–15; 8:45 am]

BILLING CODE 7510–13–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–53; Order No. 2466]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 3. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 11, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On May 1, 2015, the Postal Service filed notice of an Amendment to the existing Priority Mail Express, Priority Mail & First-Class Package Service Contract 3 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment changes prices, as contemplated by the contract's terms. *Id.*

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.* Attachment B at 1.

II. Notice of Filing

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 11, 2015. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis Kidd to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–53 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than May 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–11066 Filed 5–7–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 3, with Portions Filed Under Seal, May 1, 2015 (Notice).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–49 and CP2015–61; Order No. 2468]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition to Priority Mail Express & Priority Mail Contract 18. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 11, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express & Priority Mail Contract 18 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–49 and CP2015–61 to consider the Request pertaining to the proposed Priority Mail Express & Priority Mail Contract 18 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 11, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–49 and CP2015–61 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than May 11, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 18 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 1, 2015 (Request).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–11079 Filed 5–7–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* May 8, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 1, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 18 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–49, CP2015–61.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–11067 Filed 5–7–15; 8:45 am]

BILLING CODE 7710–12–P

REAGAN-UDALL FOUNDATION FOR THE FOOD AND DRUG ADMINISTRATION

[BAC 416404]

Request for Scientific Advisory Committee Nominations

ACTION: Request for nominations to the Scientific Advisory Committee for the Foundation's Innovation in Medical Evidence Development and Surveillance (IMEDS) program.

SUMMARY: The Reagan-Udall Foundation for the Food and Drug Administration (FDA), which was created by Title VI of the Food and Drug Amendments of 2007, is requesting nominations for its Innovation in Medical Evidence Development and Surveillance (IMEDS) Scientific Advisory Committee. The IMEDS Scientific Advisory Committee will provide scientific oversight and guidance of the IMEDS Program, and will report to the Reagan-Udall Foundation for the FDA's Board of Directors. Instructions on submitting nominations are listed in the ''Background'' section.

DATES: All nominations must be submitted to the Reagan-Udall Foundation for the FDA by May 24, 2015. IMEDS Scientific Advisory Committee members will be selected by the IMEDS Steering Committee before July 15, 2015; those selected will be notified by July 30, 2015 regarding the Steering Committee's decision.

Location: The Reagan-Udall Foundation for the FDA is located at 1025 Connecticut Ave. NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nicole Spear, Reagan-Udall Foundation for the FDA, 202–828–1210. Nominations should be sent to *IMEDS@ReaganUdall.org.* Email subject line: SAC Nomination.

SUPPLEMENTARY INFORMATION:

I. Background

The Reagan-Udall Foundation for the FDA (the Foundation) is an independent 501(c)(3) not-for-profit, organization created by Congress to advance the mission of FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development; accelerate innovation, and enhance product safety. With the ultimate goal of improving public health, the Foundation provides a unique opportunity for different sectors (FDA, patient groups, academia, other government entities, and industry) to work together in a transparent way to create exciting new research projects to advance regulatory science.

The Foundation acts as a neutral third party to establish novel, scientific collaborations. Much like any other independently developed information, FDA evaluates the scientific information from these collaborations to determine how Reagan-Udall Foundation projects can help the agency to fulfill its mission.

The Innovation in Medical Evidence Development and Surveillance (IMEDS) program is offered by the Foundation. IMEDS is a public-private partnership created to build upon the significant progress made on research methodology by the Sentinel Initiative and the Observational Medical Outcomes Partnership (OMOP).

IMEDS's primary objective is to advance the science and tools necessary to support post-market evidence generation on regulated products, including safety surveillance and

evaluations, and to facilitate utilization of a robust electronic healthcare data platform for generating better evidence on regulated products in the post-market settings. To accomplish this objective, the IMEDS program includes three projects:

1. IMEDS-Methods: Supports the development of a methods research agenda and coordination of methods research in support of using electronic health data for safety surveillance conducted by FDA as well as the broader community of researchers.

2. IMEDS-Education: Offers educational opportunities in areas related to medical product safety surveillance, and methods research and application for scientific professionals.

3. IMEDS-Evaluation: Applies Methods and Education lessons learned for medical product assessments to facilitate leveraging Sentinel tools and capabilities toward a national resource for evidence generation.

The IMEDS Scientific Advisory Committee has oversight of all IMEDS projects.

II. IMEDS Scientific Advisory Committee Positions and Selection Criteria

RUF is seeking nominations for four (4) voting members of the IMEDS Scientific Advisory Committee listed below.

1. At Large (excluding Pharmaceutical representative): 2 members.

2. Regulated Industry Representative: 2 members.

The following criteria will be used to evaluate nominees for the IMEDS Scientific Advisory Committee.

1. Required Criteria for Each of 4 Positions.

a. Currently employed by/volunteering for stakeholder field (*e.g.,* academia, patient advocate, provider etc.) with several years of relevant experience.

b. Leading expert in their relevant field (based on position/title, publications, or other experience).

2. Criteria across Scientific Advisory Committee (*It is not a requirement that all nominees meet all of these criteria, but collectively, the Scientific Advisory Committee members should meet them.)*

a. Ability to complete Scientific Advisory Committee responsibilities (which can be accessed via the IMEDS Web site: *http://imeds.reaganudall.org/governance.*)

b. Prior experience serving on a related or similar governance body.

c. Understanding of post-market surveillance landscape and impact upon stakeholder group represented by Scientific Advisory Committee seat, or understanding of issues around use of electronic health data for observational purposes.

d. Individuals both with and without past experience in Mini-Sentinel, OMOP, and similar research/regulatory science initiatives to ensure a diversity of perspectives.

e. Individuals from both U.S.- and international-based institutions.

III. Terms of Service

- The IMEDS Scientific Advisory Committee meets in-person at least twice per year, with bimonthly teleconferences in between meetings (or monthly teleconferences as deemed necessary by the Chair).
- Members serve two-year terms, and a maximum of two terms (based on IMEDS fiscal calendar).
- Members do not receive compensation from RUF.
- Members can be reimbursed by RUF for actual and reasonable expenses incurred in support of IMEDS in accordance with applicable law and their specific institutional policies.
- Members are subject to the IMEDS Conflict of Interest policies.

IV. Nomination Instructions

- To apply, please submit the nominee's CV and the nomination form that can be found on the IMEDS Web site: *imeds.reaganudall.org,* to *IMEDS@reaganudall.org* with ''SAC Nomination'' in the subject line.
- Individuals may be nominated for one or more of the 4 voting positions, and those making nominations should specify for which of the 4 voting positions the nominee is being nominated.
- Individuals may nominate themselves.

Dated: May 4, 2015.

Jane Reese-Coulbourne,

Executive Director, Reagan-Udall Foundation for the FDA.

[FR Doc. 2015–11077 Filed 5–7–15; 8:45 am]

BILLING CODE 4164–04–P

REAGAN-UDALL FOUNDATION FOR THE FOOD AND DRUG ADMINISTRATION

Request for Steering Committee Nominations

ACTION: Request for nominations to the Steering Committee for the Foundation's Innovation in Medical Evidence Development and Surveillance (IMEDS) program.

SUMMARY: The Reagan-Udall Foundation for the Food and Drug Administration (FDA), which was created by Title VI of the Food and Drug Amendments of 2007, is requesting nominations for its Innovation in Medical Evidence Development and Surveillance (IMEDS) Steering Committee. The IMEDS Steering Committee will provide oversight and guidance of the IMEDS Program, and will report to the Reagan-Udall Foundation for the FDA's Board of Directors. Instructions on making nominations are listed in the ''Background'' section.

DATES: All nominations must be submitted to the Reagan-Udall Foundation for the FDA by May 24, 2015. IMEDS Steering Committee members will be selected by the Reagan-Udall Foundation for the FDA's Board of Directors by July 2015; those selected will be notified by July 30, 2015 regarding the Board's decision.

Location: The Reagan-Udall Foundation for the FDA is located at 1025 Connecticut Ave. NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nicole Spear, Reagan-Udall Foundation for the FDA, 202–828–1210. Nominations should be sent to *IMEDS@ReaganUdall.org.* Email subject line: SC Nomination.

SUPPLEMENTARY INFORMATION:

I. Background

The Reagan-Udall Foundation for the FDA (the Foundation) is an independent 501(c)(3) not-for-profit, organization created by Congress to advance the mission of FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development; accelerate innovation, and enhance product safety. With the ultimate goal of improving public health, the Foundation provides a unique opportunity for different sectors (FDA, patient groups, academia, other government entities, and industry) to work together in a transparent way to create exciting new research projects to advance regulatory science.

The Foundation acts as a neutral third party to establish novel, scientific collaborations. Much like any other independently developed information, FDA evaluates the scientific information from these collaborations to determine how Reagan-Udall Foundation projects can help the agency to fulfill its mission.

The Innovation in Medical Evidence Development and Surveillance (IMEDS) program is offered by the Foundation. IMEDS is a public-private partnership created to build upon the significant progress made on research methodology by the Sentinel Initiative and the

Observational Medical Outcomes Partnership (OMOP).

IMEDS's primary objective is to advance the science and tools necessary to support post-market evidence generation on regulated products, including safety surveillance and evaluations, and to facilitate utilization of a robust electronic healthcare data platform for generating better evidence on regulated products in the post-market settings. To accomplish this objective, the IMEDS program includes three projects:

1. IMEDS-Methods: Supports the development of a methods research agenda and coordination of methods research in support of using electronic health data for safety surveillance conducted by FDA as well as the broader community of researchers.

2. IMEDS-Education: Offers educational opportunities in areas related to medical product safety surveillance, and methods research and application for scientific professionals.

3. IMEDS-Evaluation: Applies Methods and Education lessons learned for medical product assessments to facilitate leveraging Sentinel tools and capabilities toward a national resource for evidence generation.

The IMEDS Steering Committee will have oversight of all IMEDS projects.

II. IMEDS Steering Committee Positions and Selection Criteria

RUF is seeking nominations for two (2) voting members of the IMEDS Steering Committee listed below.

1. At Large (excluding Pharmaceutical representative): 1 member.

2. Provider (*i.e.,* Clinician): 1 member.

The following criteria will be used to evaluate nominees for the IMEDS Steering Committee.

1. Required Criteria for Each of 2 Positions

a. Currently employed by/volunteering for stakeholder field (*e.g.,* academia, patient advocate, provider etc.) with several years of relevant experience.

b. Leading expert in their relevant field (based on position/title, publications, or other experience).

2. Criteria across Steering Committee (*It is not a requirement that all nominees meet all of these criteria, but collectively, the Steering Committee members should meet them.)*

a. Ability to complete Steering Committee responsibilities (which can be accessed via the IMEDS Web site: *http://imeds.reaganudall.org/governance.*)

b. Prior experience serving on a related or similar governance body.

c. Understanding of post-market surveillance landscape and impact upon stakeholder group represented by Steering Committee seat, or understanding of issues around use of electronic health data for observational purposes.

d. Individuals both with and without past experience in Mini-Sentinel, OMOP, and similar research/regulatory science initiatives to ensure a diversity of perspectives.

e. Individuals from both U.S.- and international-based institutions.

III. Terms of Service

- The IMEDS Steering Committee meets in-person at least twice per year, with bimonthly teleconferences in between meetings (or monthly teleconferences as deemed necessary by the Chair).
- Members serve two-year terms, and a maximum of two terms (based on IMEDS fiscal calendar).
- Members do not receive compensation from RUF.
- Members can be reimbursed by RUF for actual and reasonable expenses incurred in support of IMEDS in accordance with applicable law and their specific institutional policies.
- Members are subject to the IMEDS Conflict of Interest policies.

IV. Nomination Instructions

- To apply, please submit the nominee's CV and the nomination form that can be found on the IMEDS Web site: *imeds.reaganudall.org,* to *IMEDS@reaganudall.org* with ''SC Nomination'' in the subject line.
- Individuals may be nominated for one or more of the 2 voting positions, and those making nominations should specify for which of the 2 voting positions the nominee is being nominated.
- Individuals may nominate themselves.

Dated: May 4, 2015.

Jane Reese-Coulbourne,

Executive Director, Reagan-Udall Foundation for the FDA.

[FR Doc. 2015–11075 Filed 5–7–15; 8:45 am]

BILLING CODE 4164–04–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74863; File No. SR–NYSEArca–2015–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 Relating to the Listing of Investment Company Units Based on Municipal Bond Indexes

May 4, 2015.

On January 16, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 to accommodate the listing of certain Investment Company Units based on municipal bond indexes. The proposed rule change was published for comment in the **Federal Register** on February 4, 2015.[3] On March 19, 2015, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Description of the Exchange's Proposal [7]

NYSE Arca Equities Rule 5.2(j)(3) permits the listing and trading of Investment Company Units (''Units'').[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74175 (Jan. 29, 2015), 80 FR 6150 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 74534, 80 FR 15834 (Mar. 25, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated May 5, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] A complete description of the proposal can be found in the Notice. *See* Notice, *supra* note 3.

[8] An ''Investment Company Unit'' is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing

Continued

Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) permits the listing and trading of a series of Units pursuant to Rule 19b–4(e) under the Act [9] based on an underlying index or portfolio of ''Fixed Income Securities'' [10] meeting specified criteria.[11] These ''generic'' listing criteria permit, without Commission approval pursuant to Section 19(b)(2) of the Act,[12] the listing and trading on the Exchange of a series of Units meeting such criteria.

Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that, to be listed and traded pursuant to Rule 19b–4(e) under the Act, components of an index or portfolio underlying a series of Units, in the aggregate, that account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more. The Exchange proposes to amend this generic listing criterion to accommodate the listing of Units based on indexes or portfolios that include municipal bonds.[13]

Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2) to state that components that, in the aggregate, account for at least 75% of the weight of an index or portfolio shall: (A) Each shall have a minimum original principal amount outstanding of $100 million or more; or (B) if a municipal bond component, such component shall be issued in an offering with an aggregate size, as set forth in the offering's official statement, of $100 million or more. Accordingly, if an individual municipal bond component of an index or portfolio has an amount outstanding of less than $100 million, Units based on such an index or portfolio could still meet the generic listing standard if the municipal bond component were part of an overall municipal bond offering of $100 million or more.

The Exchange provides that it is appropriate to calculate components of a municipal bond index differently from other Fixed Income Securities. Principally, the Exchange states that municipal bonds are issued with either ''serial'' or ''term'' maturities or some combination thereof. The official statement issued in connection with a municipal bond offering describes the terms of the component bonds and the issuer and/or obligor on the related bonds. Such an offering is comprised of a number of specific maturity sizes, but the entire issue or offering receives the same credit rating. Further, the entire issue or offering is based on a specified project or group of related projects and funded by the same revenue or other funding sources.

According to the Exchange, because the individual municipal bond components of an index or portfolio may predominantly have maturities of less than $100 million outstanding (although part of a municipal bond offering of $100 million or greater), if only individual maturity sizes are considered, Units based on a municipal bond index may not qualify to be listed under the generic listing standards. Accordingly, the Exchange believes the proposed amendment to Commentary .02(a)(2) would facilitate the listing of Units based on municipal bond indexes by permitting the Exchange, in applying its generic listing criteria, to take into account the aggregate size of the municipal bond offering.

The Exchange states that consideration of the aggregate size of the municipal bond offering, rather than the individual bond component, does not raise concerns regarding pricing or liquidity of the applicable municipal bond index components or of the Units overlying the applicable index. The Exchange states that, within a single municipal bond issuer, there are often multiple contemporaneous or sequential issuances that have the same credit rating, structure, and maturity. According to the Exchange, although these separate issues have different CUSIPs, because individual maturities share a number of important features, including credit rating and the purpose and terms of the offering as set forth in the applicable official statement, for investment purposes, they can be expected to be relatively fungible to one another. Accordingly, the Exchange believes that the proposed rule change is reasonable and appropriate because the pricing and liquidity of such maturity sizes is predominately based on the common characteristics of the aggregate issue.

The Exchange also notes that major municipal bond indexes, while they include individual bond maturities as index components, include ''deal size'' as a factor in the criteria for index constituents and additions.[14] Finally, the Exchange also provides that the Commission previously has approved the listing and trading of Units where the applicable municipal index components did not individually meet the 75% requirement of NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(2).[15]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2015–01 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [16] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [18]

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an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[9] *See* 17 CFR 240.19b–4(e).

[10] ''Fixed Income Securities'' are described in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

[11] *See* Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving generic listing standards for series of Units based on Fixed Income Indexes).

[12] 15 U.S.C. 78s(b)(2).

[13] The Commission previously has approved proposed rule changes relating to listing and trading on the Exchange of Units based on municipal bond indexes. *See, e.g.,* Securities Exchange Act Release No. 72523, (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of the iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02). *See also* Notice, *supra* note 3, 80 FR at 6151, n.9.

[14] In its proposal, the Exchange cites to the S&P National AMT-Free Municipal Bond Index, the Barclays Capital Investment-Grade Municipal Index, Barclays Capital High-Yield Municipal Index, and the Barclays Capital Enhanced State Specific Indices. *See* Notice, *supra* note 3, 80 FR at 6151.

[15] *See supra* note 13.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that 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.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 29, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 12, 2015.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[20] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Exchange concludes that individual CUSIPs comprising the municipal bond offering can be expected to be relatively fungible to one another and that consideration of the aggregate size of the municipal bond offering, rather than the individual bond component, does not raise concerns regarding pricing or liquidity of the applicable municipal bond index components or of the Units overlying the applicable index. With respect to these conclusions, the Commission seeks comment on whether the generic listing criterion proposed to be amended would continue to serve to ensure that the underlying securities of these fixed income indexes are sufficiently liquid and price-transparent, and that, when applied in conjunction with the other applicable generic listing requirements, would minimize potential manipulation.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–01 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 Numbers SR–NYSEArca–2015–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings 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–2015–01 and should be submitted on or before May 29, 2015. Rebuttal comments should be submitted by June 12,2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11057 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[19] 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).

[20] *See supra* note 3.

[21] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74865; File No. SR–NYSEARCA–2015–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca Integrated Feed To Add a Late Fee In Connection With Failure To Submit the Non-Display Use Declaration

May 4, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 24, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE Arca Integrated Feed to add a late fee in connection with failure to submit the non-display use declaration, operative on May 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend the fees for NYSE Arca Integrated Feed, as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''), to add a late fee in connection with failure to submit an updated non-display use declaration. The proposed change to the Fee Schedule would be operative on May 1, 2015.

The Exchange established the current fees for non-display services for NYSE Arca Integrated Feed in April 2013 and amended those fees in September 2014.[4] The 2013 Non-Display Filing established a requirement that data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees submit a declaration with respect to their use of non-display data.[5] In connection with the fee changes in the 2014 Non-Display Filing, the Exchange required data recipients that receive real-time NYSE Arca market data subject to Non-Display Use fees to complete and submit an updated Non-Display Use Declaration by September 1, 2014.[6] The 2014 Non-Display Filing also established that data recipients are required to submit an updated annual Non-Display Use Declaration by January 31st of each year beginning in 2016. In addition, if a data recipient's use of real-time NYSE Arca market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

The Exchange notes that if a data recipient does not timely submit a Non-Display Use Declaration, the Exchange does not have up-to-date information about the data recipient's data use and therefore may not be charging the correct fees to the data recipient. In order to correctly assess fees for the non-display use of NYSE Arca Integrated Feed, the Exchange needs to have current and accurate information about the use of NYSE Arca Integrated Feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting customer records in connection with late Non-Display Use Declarations. The purpose of the proposed late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

The Exchange proposes to establish a Non-Display Declaration Late Fee of $1,000 per month. The proposed fee would be charged to any data recipient that pays an Access Fee for NYSE Arca Integrated Feed that has failed to timely complete and submit a Non-Display Use Declaration.

With respect to the Non-Display Use Declaration that was due by September 1, 2014, the Non-Display Declaration Late Fee would apply to NYSE Arca Integrated Feed data recipients that have not submitted the Non-Display Use Declaration by June 30, 2015, and would apply beginning July 1, 2015 and for each month thereafter until the data recipient has completed and submitted the Non-Display Use Declaration. With respect to the annual Non-Display Use Declaration due by January 31st of each year beginning in 2016, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.[7] A Non-Display Use Declaration that is clearly incomplete would not be considered to have been completed and submitted to the Exchange on time.

In addition to adding the Non-Display Declaration Late Fee for NYSE Arca Integrated Feed to the Fee Schedule, the Exchange proposes to add an endnote to the Fee Schedule that would specify the effective dates for the Non-Display Declaration Late Fee as described above, and to change the numbering for the existing endnotes as needed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE Arca Integrated Feed, the Exchange needs to have current and accurate information about the use of NYSE Arca Integrated Feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it will apply to all data recipients that choose to subscribe to the NYSE Arca Integrated Feed.

The Non-Display Declaration Late Fee is also consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[10] The CTA imposes a monthly fee of $2,500 for each of Network A and Network B for firms that fail to comply with their reporting obligations in a timely manner.

[4] *See* Securities Exchange Act Release Nos. 69315 (Apr. 5, 2013), 78 FR 21668 (Apr. 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing'') and 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–93) (''2014 Non-Display Filing'').

[5] The non-display fee structure established in the 2013 Non-Display Filing replaced a monthly reporting obligation with respect to non-display devices with the requirement to submit the non-display use declaration. The Exchange also notes that if a data recipient only subscribes to products for which there are no non-display usage fees, *e.g.,* NYSE Arca Realtime Reference Prices, then no declaration is required.

[6] The current form of the Non-Display Use Declaration reflected the changes to the non-display fees set forth in the 2014 Non-Display Filing and replaced the NYSE Euronext Non-Display Use Declaration established in connection with the 2013 Non-Display Filing.

[7] The Exchange will be proposing to establish the Non-Display Declaration Late Fee with respect to each Market Data product on the Fee Schedule that includes Non-Display Fees.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data. In addition to being able to choose which proprietary data products (if any) to use and how to use them, a user can avoid the late fees that are the subject of this filing entirely by simply complying with the requisite deadlines.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of fierce competition to sell proprietary data products and for order flow, as well as numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase (the returns on use being a particularly important aspect of non-display uses of proprietary data).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–34. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–34, and should be submitted on or before May 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11059 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74866; File No. SR–NYSEArca–2015–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to the List and Trade Shares of the Principal EDGE Active Income ETF Under NYSE Arca Equities Rule 8.600

May 4, 2015.

I. Introduction

On March 12, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of the Principal EDGE Active Income ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on March 27, 2015.[4] On April 14, 2015, the Exchange filed Amendment No. 1 to the proposal.[5] The Commission received no

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74562 (March 23, 2015), 80 FR 16477 (''Notice'').

[5] In Amendment No. 1, the Exchange: (1) Clarifies that the Fund's investments in restricted securities (Rule 144A securities) will be limited to fixed income securities; and (2) specifies that the Fund will not invest in debt that is in default at the time

Continued

comments on the proposal. This order approves the proposed rule change, as modified by Amendment No.1.

II. The Exchange's Description of the Proposal [6]

NYSE Arca proposes to list and trade shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[7] The Fund is a series of the Principal Exchange-Traded Funds (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[8] Principal Management Corporation will be the investment manager for the Fund (''Adviser''). Principal Global Investors, LLC and Edge Asset Management, LLC will each serve as a sub-adviser and portfolio manager (each referred to as a ''Sub-Adviser'' and collectively as the ''Sub-Advisers'').[9] The Adviser and Sub-Advisers are not registered as broker-dealers but are affiliated with three broker-dealers and have implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios.[10]

A. Principal Investments of the Fund

The Fund will seek to provide current income, and will invest in a manner designed to provide shareholders with regular cash flow from their investment in the Fund. With regard to each investment category, the Fund will carry out its investment strategy by investing in the securities listed in each investment category below and/or through the purchase of shares issued by U.S. exchange-traded funds (''ETFs'') [11] or other investment companies, including shares in unit investment trusts and open-end investment companies, that invest a majority of their assets in the securities listed in the Principal Investment categories below. Under normal market circumstances,[12] the Fund will invest a majority of its net assets in the following financial instruments listed in sections II.A.1 and 2, below:

1. Investment Grade and Non-Investment Grade U.S. and Non-U.S. Fixed Income Securities

Under normal market circumstances, at least 20% but no more than 90% of the Fund's net assets will be invested in investment grade and non-investment grade fixed income securities [13] which will consist of the following: U.S. Treasuries; agency securities; asset-backed securities; residential mortgage-backed securities; commercial mortgage-backed securities; zero-coupon securities; variable and floating rate instruments including inverse floaters; covered securities; sinking fund securities; equipment trust certificates; sovereign bonds; convertible bonds; pay-in-kind securities; step-coupon securities; stripped securities; inflation-indexed bonds; inflation protected debt securities; bank loans; municipal bonds; and corporate bonds issued by U.S., supranational and non-U.S. issuers (including issuers located in emerging markets) and denominated in U.S. dollars.[14]

2. Equity Securities Including U.S. and Non-U.S. Issues

Under normal market circumstances, at least 20% but no more than 90% of the Fund's net assets will be invested in a diversified portfolio of equity securities issued by companies located in the U.S. and/or foreign countries, including emerging markets, which trade on a U.S. or foreign exchange. The Fund may carry out its investment in foreign securities by purchasing American Depositary Receipts (''ADRs''), European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs'', together with EDRs and ADRs, ''Depositary Receipts'').[15] The equity securities will be common stocks and preferred stocks as well as master limited partnerships and real estate investment trusts.

The Fund may engage in short sales.

B. Non-Principal Investments

While the Fund, under normal market circumstances, will invest a majority of

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of purchase. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

[6] Additional information regarding, among other things, the Shares, the Fund, its investment objective, its investments, its investment strategies, its investment methodology, its investment restrictions, its fees, its creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures can be found in the Notice and in the Registration Statement. *See* Notice, *supra* note 4, and Registration Statement, *infra* note 8, respectively.

[7] 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.

[8] The Trust is registered under the 1940 Act. On February 6, 2015, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–201935 and 811–23029) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Adviser (as defined herein) under the 1940 Act. *See* Investment Company Act Release No. 30742 (File No. 812–14136) (''Exemptive Order''). The Fund will be offered in reliance upon the Exemptive Order issued to the Adviser.

[9] 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-Advisers 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.

[10] *See* Notice, *supra* note 4, at 16478. In the event that (a) the Adviser or Sub-Advisers become registered broker-dealers or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios. *See id.*

[11] All ETF shares held by the Fund will be listed and traded in the U.S. on a national securities exchange. *See id.,* n.8.

[12] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity and fixed income markets or the financial markets generally; events or circumstances causing a disruption in market liquidity or orderly markets; 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. *See id.,* n.9.

[13] The Fund will limit its investments in non-investment grade fixed income securities to 75% or less of the Fund's net assets. *See id.,* n.10.

[14] Under normal market circumstances, the Fund will generally seek to invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries. *See* Notice, *supra* note 4, 80 FR at 16479, n.24.

[15] Not more than 10% of the net assets of the Fund will be invested in non-exchange-listed ADRs. *See id.* at 16483.

its assets in the securities and financial instruments described above, the Fund may invest in other securities and financial instruments, as described below. With regard to each non-principal investment category, the Fund may carry out its investment strategy by investing in the securities listed in each investment category below and/or through the purchase of shares issued by ETFs or other investment companies that invest a majority of their assets in the securities listed in the investment categories below.

The Fund may invest in the following money market instruments: commercial paper issued by U.S. and foreign corporations; bank obligations; certificates of deposit; time deposits and bankers' acceptances of U.S. commercial banks and overseas branches of U.S. commercial banks and foreign banks; and short-term corporate debt, all of which have, at the time of purchase, 397 days or less remaining to maturity issued by U.S. and foreign issuers.

A portion of the Fund's assets may be invested in cross currency positions of the currencies of developed and emerging markets through spot foreign exchange currency contracts, forward foreign exchange currency contracts, and foreign exchange currency options that trade on U.S. exchanges.

The Fund may invest in the following derivative instruments: Futures contracts (consisting of futures contracts based on equity or fixed income securities and/or equity or fixed income indices, commodities, interest rates and currencies); swap agreements on any of the following asset classes: equity, fixed income, currency and interest rates (such swaps may be based on the price return or total return of the referenced asset); credit default swaps (consisting of credit default swaps in which the referenced asset is a single fixed income security or a group of fixed income securities); options (consisting of long and short positions in call options and put options on indices based on equities, fixed income securities, interest rates, currencies or commodities, individual securities or currencies, swaptions and options on futures contracts); and forward contracts (consisting of forward contracts based on equity or fixed income securities and/or equity or fixed income indices, currencies, interest rates, swap forwards and non-deliverable forwards). Futures contracts and options on futures contracts in which the Fund may invest will be traded on U.S. exchanges regulated by the Commodity Futures Trading Commission (''CFTC''),[16] all of which will be members of the ISG or exchanges with which the Exchange has in place a CSSA. All other options contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a CSSA with the Exchange.

The Fund may use repurchase agreements, reverse repurchase agreements, and mortgage dollar rolls for temporary or emergency purposes or to earn additional income on portfolio securities, such as Treasury bills or notes.[17]

With respect to its investments in fixed income securities, the Fund may invest in restricted securities (Rule 144A securities), which are subject to legal restrictions on their sale.[18]

C. Investment Restrictions

The Exchange represents that the Fund will limit its investment in non-government sponsored residential mortgage-backed securities, commercial mortgage-backed securities and asset-backed securities (including equipment trust certificates) as well as bank loans and illiquid restricted securities, in the aggregate, to 20% or less of the Fund's net assets.

The Exchange represents that 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 illiquid by the Adviser, consistent with Commission guidance. 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.

Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-listed equity securities shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange.

The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, -2X, 3X or -3X) ETFs.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high speed line. The Exchange represents that quotation and last-sale information for the portfolio holdings of the Fund that are U.S. exchange-listed will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures, will also be available from the exchange on which they are listed. Quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. In addition, quotation information for OTC-traded securities, OTC-traded derivative instruments, investment company securities (excluding ETFs), Rule 144A

[16] According to the Exchange, the Fund has claimed an exclusion from the definition of a ''commodity pool operator'' under the Commodity Exchange Act (''CEA'') (7 U.S.C. 1) and is not subject to registration or regulation as a commodity pool operator under the CEA.

[17] The Fund will enter into reverse repurchase agreements only with parties that the Sub-Advisers deems creditworthy.

[18] *See* Amendment No. 1, *supra* note 5.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

securities, U.S. Treasuries, agency securities, asset-backed securities, residential mortgage-backed securities, commercial mortgage-backed securities, zero-coupon securities, variable and floating rate instruments including inverse floaters, covered securities, sinking fund securities, equipment trust certificates, sovereign bonds, convertible bonds, pay-in-kind securities, step-coupon securities, stripped securities, inflation-indexed bonds, inflation protected debt securities, bank loans, municipal bonds, corporate bonds, and money market instruments may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[22] The Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[23] In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[24] The Fund will make available, prior to the opening of trading on the NYSE (currently 9:30 a.m. Eastern Time), through the National Securities Clearing Corporation the names and quantities of the instruments comprising the in-kind deposit of specified instruments, as well as the difference in market value of the aggregate market value of the in-kind deposit and the NAV attributable to a creation unit (if any), for that day. The NAV of the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded and additional information relating to NAV and other applicable information.

The Exchange represents that trading in the Shares 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.[25] 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.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange represents that the Adviser and Sub-Advisers are not registered as broker-dealers but are affiliated with three broker-dealers and have implemented and will maintain a ''fire wall'' with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. The Exchange states 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.[26] On behalf of the Exchange, FINRA will communicate as needed regarding trading in the Shares, ETFs, other exchange-traded equity securities (including exchange-listed Depositary Receipts), options, futures, and options on futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in such financial instruments, as applicable, from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such financial instruments, as applicable, from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[27] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange represents that it 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. In support of this proposal, the Exchange has also made the following representations:

(1) The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in 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 these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) 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; (c)

[22] 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.

[23] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

[25] 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.

[26] 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.

[27] 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.

the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV and the Disclosed Portfolio is disseminated; (e) 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 (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [28] under the Act, as provided by NYSE Arca Equities Rule 5.3.

(6) 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 illiquid by the Adviser, consistent with Commission guidance. 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.

(7) The Fund will limit its investment in non-government sponsored residential mortgage-backed securities, commercial mortgage-backed securities and asset-backed securities (including equipment trust certificates) as well as bank loans and illiquid restricted securities, in the aggregate, to 20% or less of the Fund's net assets.

(8) Not more than 10% of the net assets of the Fund will be invested in non-exchange-listed ADRs.

(9) Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSEArca–2015–15), as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11080 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 240 10A–3.

[29] 15 U.S.C. 78f(b)(5).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74862; File No. SR–CBOE–2015–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to Rules 6.74A and 6.74B

May 4, 2015.

On March 6, 2015, Chicago Board Options Exchange, Incorporated (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding the ability of a Market-Maker assigned to an options class to be solicited as the contra party to an Agency Order in that class on the Exchange's Automated Improvement Mechanism and Solicitation Auction Mechanism. The proposed rule change was published for comment in the **Federal Register** on March 23, 2015.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 7, 2015.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act [5] and for the reasons stated above, the Commission designates June 21, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2015–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11056 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74519 (March 17, 2015), 80 FR 15264.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74861; File No. SR–NYSE–2015–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE BBO and NYSE Trades To Add a Late Fee In Connection With Failure To Submit the Non-Display Use Declaration

May 4, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 27, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE BBO and NYSE Trades to add a late fee in connection with failure to submit the non-display use declaration, operative on May 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE BBO and NYSE Trades, as set forth on the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''), to add a late fee in connection with failure to submit an updated non-display use declaration. The proposed change to the Fee Schedule would be operative on May 1, 2015.

The Exchange established the current fees for non-display services for NYSE BBO and NYSE Trades in April 2013 and amended those fees in September 2014.[4] The 2013 Non-Display Filing established a requirement that data recipients that receive real-time NYSE market data subject to Non-Display Use fees submit a declaration with respect to their use of non-display data.[5] In connection with the fee changes in the 2014 Non-Display Filing, the Exchange required data recipients that receive real-time NYSE market data subject to Non-Display Use fees to complete and submit an updated Non-Display Use Declaration by September 1, 2014.[6] The 2014 Non-Display Filing also established that data recipients are required to submit an updated annual Non-Display Use Declaration by January 31st of each year beginning in 2016. In addition, if a data recipient's use of real-time NYSE market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

The Exchange notes that if a data recipient does not timely submit a Non-Display Use Declaration, the Exchange does not have up-to-date information about the data recipient's data use and therefore may not be charging the correct fees to the data recipient. In order to correctly assess fees for the non-display use of NYSE BBO and NYSE Trades, the Exchange needs to have current and accurate information about the use of NYSE BBO and NYSE Trades. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting customer records in connection with late Non-Display Use Declarations. The purpose of the proposed late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

The Exchange proposes to establish a Non-Display Declaration Late Fee of $1,000 per month. The proposed fee would be charged to any data recipient that pays an Access Fee for NYSE BBO and NYSE Trades that has failed to timely complete and submit a Non-Display Use Declaration.

With respect to the Non-Display Use Declaration that was due by September 1, 2014, the Non-Display Declaration Late Fee would apply to data recipients of NYSE BBO and NYSE Trades that have not submitted the Non-Display Use Declaration by June 30, 2015, and would apply beginning July 1, 2015 and for each month thereafter until the data recipient has completed and submitted the Non-Display Use Declaration. With respect to the annual Non-Display Use Declaration due by January 31st of each year beginning in 2016, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.[7] A Non-Display Use Declaration that is clearly incomplete would not be considered to have been completed and submitted to the Exchange on time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE BBO and NYSE Trades, the Exchange needs to have current and accurate information about the use of NYSE BBO and NYSE Trades. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it

[4] *See* Securities Exchange Act Release Nos. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013)(SR–2013–25 [sic])(''2013 Non-Display Filing'') and 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014)(SR–NYSE–2014–43)(''2014 Non-Display Filing'').

[5] The non-display fee structure established in the 2013 Non-Display Filing replaced a monthly reporting obligation with respect to non-display devices with the requirement to submit the non-display use declaration. The Exchange also notes that if a data recipient only subscribes to products for which there are no non-display usage fees, *e.g.,* NYSE Realtime Reference Prices, then no declaration is required.

[6] The current form of the Non-Display Use Declaration reflected the changes to the non-display fees set forth in the 2014 Non-Display Filing and replaced the NYSE Euronext Non-Display Use Declaration established in connection with the 2013 Non-Display Filing.

[7] The Exchange has established the Non-Display Declaration Late Fee with respect to NYSE OpenBook and in that filing adopted endnote 2, which specifies the effective dates for the Non-Display Declaration Late Fee as described above. *See* SR–NYSE–2015–20.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

will apply to all data recipients that choose to subscribe to the NYSE BBO and NYSE Trades feed.

The Non-Display Declaration Late Fee is also consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[10] The CTA imposes a monthly fee of $2,500 for each of Network A and Network B for firms that fail to comply with their reporting obligations in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data. In addition to being able to choose which proprietary data products (if any) to use and how to use them, a user can avoid the late fees that are the subject of this filing entirely by simply complying with the requisite deadlines.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of fierce competition to sell proprietary data products and for order flow, as well as numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase (the returns on use being a particularly important aspect of non-display uses of proprietary data).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–22 and should be submitted on or before May 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11055 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013)(SR–CTA/CQ–2013–04).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74864; File No. SR–CBOE–2015–043]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Automated Improvement Mechanism Order Allocation

May 4, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.74A relating to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its AIM auction Rule 6.74A to provide that in instances where an Initiating Trading Permit Holder electronically submits an order that it represents as agent (''Agency Order'') into an AIM Auction (''Auction''), which the Initiating Trading Permit Holder is willing to automatically match (''auto-match'') as principal, the price and size of all Auction responses up to an optional designated limit price and, at the final Auction price level, there is only one competing Market-Maker or Trading Permit Holder acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order, the Initiating Trading Permit Holder may be allocated up to fifty percent (50%) of the size of the order. The Exchange also proposes to add language in Rule 6.74A to more fully describe the manner in which any remaining contracts will be allocated at the conclusion of an Auction and make other non-substantive changes to Rule 6.74A to update terminology in the Rule and make fix minor typographical errors in the text. This is a competitive filing that is substantially and materially based on the price improvement auction rules of BOX Options Exchange, LLC (''BOX''),[5] Nasdaq PHLX MKT (''PHLX''),[6] and NYSE MKT LLC (''NYSE MKT'').[7]

Pursuant to Rule 6.74A(b)(3), upon conclusion of an Auction, an Initiating Trading Permit Holder will retain certain priority and trade allocation privileges for both Agency Orders that the Initiation Trading Permit Holder seeks to cross at a single price (''single-price submissions'') and Agency Orders that the Initiating Trading Permit Holder is willing to automatically match as principal the price and size of all Auction responses (''auto-match submissions''). Under current Rule 6.74A(b)(3)(F), if the best competing Auction response price equals the Initiating Trading Permit Holder's single-price submission, the Initiating Trading Permit Holder's single-price submission shall be allocated the greater of one contract or a certain percentage of the order, which percentage will be determined by the Exchange and may not be larger than 40%. However, if only one Market-Maker matches the Initiating Trading Permit Holder's single price submission then the Initiating Trading Permit Holder may be allocated up to 50% of the order.

Similarly, current Rule 6.74A(b)(3)(G) provides that if the Initiating Trading Permit Holder selected the auto-match option of the Auction, the Initiating Trading Permit Holder shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating Trading Permit Holder shall be allocated the greater of one contract or a certain percentage of the remainder of the order, which percentage will be determined by the Exchange and may not be larger than 40%. Notably, unlike the single-price submission rules in Rule 6.74A(b)(3)(F), current Rule 6.74A(b)(3)(G) provides that an Initiating Trading Permit Holder would only receive an allocation of up to 40% for orders that are matched at the final price level by only one competing Market-Maker with an appointment in the relevant option class or Trading Permit Holder acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order when the auto-match option is selected for the Agency Order. The Exchange believes this result to be inconsistent within the Rules and believes that Initiating Trading Permit Holders that price orders more aggressively using the auto-match option and that the Rules should provide that such Initiating Trading Permit Holders receive allocations at least equal to those that select a single-price submission option for an Auction.

The Exchange proposes to amend Rule 6.74A(b)(3)(G) to provide that if only one competing Market-Maker with an appointment in the relevant option class or Trading Permit Holder acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order is present at the final Auction price, then the Initiating Trading Permit Holder may be allocated up to 50% of the remainder of the Agency Order at the final Auction price level. As discussed above, current Rule 6.74A(b)(3)(G) provides that an Initiating Trading Permit Holder will receive an allocation of up to 40% for orders that are matched at the final price level by only one competing Market-Maker with an allocation in the relevant option class or Trading Permit Holder acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order when the auto-match option is selected by the Initiating Trading Permit Holder for the Auction. The Exchange believes this result to be inconsistent within the Rules and believes that Initiating Trading Permit Holders that price orders more aggressively using the auto-match option should receive allocations at least equal to those that select a single-price submission option. The Exchange also believes proposed rule change will more closely align the language in Rule 6.74A(b)(3)(G) with the language in Rule 6.74A(b)(3)(F) and will thus, provide additional internal consistency within the Rules by harmonizing order allocations of single-price submissions and auto-match Auction orders in instances where there is only one competing order at the final Auction price level. Furthermore, the proposed rule change will bring the Exchange's AIM rules in line with the Rules of other competitor exchanges with which the Exchange competes for order flow.

The Exchange notes that the proposed rule change would not affect the priority of public customer orders under Rule 6.74A(b)(3)(B). Public customer orders

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* BOX Rule 7150(h).

[6] *See* PHLX Rule 1080(n).

[7] *See* NYSE MKT Rule 9.71.1NY(c).

in the book would continue to have priority even in cases in which a public customer order is resting in the book at the final Auction price. For example, suppose that the national best bid (''NBB'') for a particular option is $1.00 and the national best offer (''NBO'') for the option is $1.20 and that the NBB is an order to buy 10 contracts at CBOE. The minimum increment in the option series is $0.01. An Initiating Trading Permit Holder at CBOE submits an auto-match Agency Order to sell 100 options contracts in the series. The Auction begins and, during the auction, one competing Market-Maker submits an Auction response to buy 50 contracts at $1.00. The Auction then concludes. In this case, the public customer order resting in the book would have priority and be allocated 10 contracts with the remaining 90 contracts being allocated 50/50 to the responding Market-Maker and the Initiating Trading Permit Holder, 45 contracts each.

Similarly, a public customer order resting in the book at a final Auction price level worse than the best Auction response will also retain priority in the book. Accordingly, assume again that the national best bid (''NBB'') for a particular option is $1.00 and the national best offer (''NBO'') for the option is $1.20 and that the NBB is an order to buy 10 contracts at CBOE. The minimum increment in the option series is $0.01. An Initiating Trading Permit Holder at CBOE submits an auto-match Agency Order to sell 100 options contracts in the series. The Auction begins and during the Auction, one competing Market-Maker (''MM1'') submits an Auction response to buy 20 contracts at $1.02, a second Market-Maker (''MM2'') submits an Action response to buy 20 contracts at $1.01, and a third Market-Maker (''MM3'') submits an Auction response to buy 20 contracts at $1.00. The Auction then concludes. In this case, MM1 and the Initiating Trading Permit Holder would each be allocated 20 contracts at $1.02 and MM2 and the Initiating Trading Permit Holder would each be allocated 20 contracts at $1.01 since the Initiating Trading Permit Holder is willing to match the price and size at each improved price level. The remaining 20 contracts would be allocated 10 to the public customer order resting in the book at $1.00 because the public customer would retain priority at that price level with the remaining 10 contracts being allocated 50/50 to MM3 and the Initiating Trading Permit Holder, 5 contracts each.[8]

The Exchange believes that increasing the Initiating Trading Permit Holder's allocation priority for auto-match submissions that only have one competing order at the final price level fairly distributes the order when there are only two counterparties to the Auction involved, and that doing so is reasonable because of the value that Initiating Trading Permit Holders provide to the market. Initiating Trading Permit Holders selecting the auto-match option for Agency Orders guarantee an execution at the NBBO or at a better price, and are subject to a greater market risk than single-price submissions while the order is exposed to other AIM participants. As such, the Exchange believes that the value added from Initiating Trading Permit Holders guaranteeing execution of Agency Orders at a price equal to or better than the NBBO in combination with the additional market risk of initiating auto-match submissions warrants an allocation priority of at least the same percentage as Trading Permit Holders who submit single-price orders into AIM. The Exchange also believes that the proposed rule change, like other price improvement allocation programs currently offered by competitor exchanges, will benefit investors by attracting more order flow as well as increasing the frequency that Trading Permit Holders initiate Auctions, which may result in greater opportunities for customer order price improvement. Moreover, as discussed above, the proposed rule change is consistent with the rules of other exchanges.[9]

The Exchange also proposes to add text to Rules 6.74A(b)(3)(F) and (G) to describe the manner in which remaining contracts would be allocated at the conclusion of an Auction under the scenarios therein. Specifically, the Exchange proposes to amend paragraphs (F) and (G) to provide that (subject to public customer priority), after the Initiating Trading Permit Holder has received an allocation of up to 40% of the Agency Order (or 50% of the Agency Order if there is only one other RFR response), contracts shall be allocated among remaining quotes, orders, and auction responses (*i.e.* interests other than the Initiating Trading Permit Holder) at the final auction price in accordance with the matching algorithm in effect for the subject class. If all RFR Responses are filled (*i.e.* no other interests remain), any remaining contracts will be allocated to the Initiating Trading Permit Holder at the single-price submission price for single-price submissions or, for auto-match submissions, to the Initiating Trading Permit Holder at the auction start price as specified under Rule 6.74A(b)(1)(a). The Exchange believes that this additional language would add clarity in the Rules with respect to how remaining odd-lots will be allocated at the conclusion of an Auction.[10]

For example, suppose that the NBBO for a particular option is $1.00–$1.20. The minimum increment for the series is $0.01 and the matching algorithm in effect for the option class is pro rata. An Initiating Trading Permit Holder submits a matched Agency Order to sell 5 contracts at $1.10. The Auction begins and, during the auction, one competing Market-Maker (''MM1'') submits an Auction response to buy 5 contracts at $1.10, followed by another Market-Maker (''MM2'') submitting an Auction response to buy 5 contracts at $1.10. The Auction concludes. In this case, under proposed Rule 6.74A(b)(3)(F), the Initiating Trading Permit Holder would receive an allocation up to 40%, or, in this case, 2 contracts at $1.10. MM1 and MM2 would then receive 1 contract each at $1.10 according to the pro rata allocation algorithm in place for the class with MM1, as the first responder, receiving the final 1 contract at the final auction price of $1.10.[11]

Similarly, suppose that the NBBO for a particular option is $1.00–$1.20. The minimum increment for the series is $0.01 and the matching algorithm in effect for the option class is pro rata. An Initiating Trading Permit Holder

[8] The Exchange notes that an unrelated public customer market or marketable limit orders on the opposite side of the market from the Agency Order that are received during an Auction will end the Auction and trade against the Agency Order at the midpoint of the best RFR response and the NBBO on the other side of the market from the RFR responses. *See* Rule 6.74A(b)(3)(D). For example, assume that the NBBO is $1.00–$1.20. An Initiating Trading Permit Holder submits a matched Agency Order to sell 100 options contracts at in the series at $1.10. The Auction begins and during the Auction, one competing Market-Maker submits an Auction response to buy 100 contracts at $1.15. Assume that after the first response is received, an unrelated public customer order to buy 100 contracts at $1.20 is received. This would conclude the auction early after which the public customer order would trade 100 contracts with the Agency Order at $1.17 (*i.e.* the midpoint between the best RFR response ($1.15) and the NBBO on the other side of the market from the RFR responses ($1.20)).

[9] *See, e.g.,* BOX Rule 7150(h); NYSE MKT Rule 9.71.1NY(c)(5)(B).

[10] The Exchange notes that such remaining contracts are currently allocated to the Initiating Trading Permit Holder in excess of the up to 40% (50% if there is only one other Market-Marker or Trading Permit Holder representing an Agency Order) of the order that the Initiating Trading Permit Holder may receive under the Exchange's existing Rules pursuant to the provision that the Initiating Trading Permit Holder will be allocated the greater of one contract or up to 40% (50% if there is only one other Market-Marker or Trading Permit Holder representing an Agency Order) at the final Auction price.

[11] *See* Rules 6.45A(a)(ii) and 6.45B(a)(i).

submits a matched Agency Order to sell 5 contracts at $1.10. The Auction begins and, during the auction, one competing Market-Maker (''MM1'') submits an Auction response to buy 1 contract at $1.10, followed by another Market-Maker (''MM2'') submitting an Auction response to buy 1 contract at $1.10. The Auction concludes. In this case, under proposed Rule 6.74A(b)(3)(F), the Initiating Trading Permit Holder would receive an allocation up to 40%, or, in this case, 2 contracts at $1.10. MM1 and MM2 would then receive 1 contract each at $1.10 according to the pro rata allocation algorithm in place for the class. With no other RFR responder interest for the Auction, however, proposed Rule 6.74A(b)(3)(F) will simply make clear that if all RFR Responses are filled (*i.e.* no other interests remain), any remaining contracts will be allocated to the Initiating Trading Permit Holder at the single-price submission price. In this case, the final 1 contract would be allocated to the Initiating Trading Permit Holder at $1.10.

Remaining odd-lots for auto-match submissions would be similarly allocated under proposed Rule 6.74A(b)(3)(G), except that if all RFR Responses are filled (*i.e.* no other interests remain), any remaining contracts will be allocated to the Initiating Trading Permit Holder at the auction start price as specified under Rule 6.74A(b)(1)(A). Accordingly, suppose that the NBBO for a particular option is $1.00–$1.20. The minimum increment for the series is $0.01 and the matching algorithm in effect for the option class is pro rata. An Initiating Trading Permit Holder submits an auto-matched Agency Order to sell 5 contracts. In this case, because the Auction is for fewer than 50 contracts, the Auction would begin at one price increment better than the NBBO, or $1.19.[12] Assume that the Auction begins and, during the auction, one competing Market-Maker (''MM1'') submits an Auction response to buy 1 contracts at $1.18, followed by another Market-Maker (''MM2'') submitting an Auction response to buy 1 contract at $1.17. The Auction concludes. In this case, MM2 and the Initiating Trading Permit Holder would each receive 1 contract at $1.17 and MM1 and the Initiating Trading Permit Holder would each receive 1 contract at $1.18. Because all RFR Responses would then be filled (*i.e.* no other interests remain), any remaining contracts will be allocated to the Initiating Trading Permit Holder at the Auction start price or, in this case, 1 contract at $1.19.

The Exchange notes that these proposed amendments are based on, and consistent with, the rules of other competitor exchanges.[13] The Exchange believes that the value added from Initiating Trading Permit Holders guaranteeing execution of Agency Orders at a price equal to or better than the NBBO warrants (to the extent that the Initiating Trading Permit Holder is on the final Auction price), an Auction allocation priority of at least the same percentage of the order as any competing Auction responses. The Exchange also believes that the proposed rule change, like other price improvement allocation programs currently offered by competitor exchanges, will benefit investors by attracting more order flow as well as increasing the frequency that Trading Permit Holders initiate Auctions, which may result in greater opportunities for customer order price improvement.

Additionally, the Exchange is proposing to add additional clarifying language to Rule 6.74A and correct minor typographical errors in the Rule. Specifically, the Exchange is seeking to amend Rule 6.74A(b)(1)(E) to replace the word ''Members'' with ''Trading Permit Holders.'' The Exchange no longer has ''members,'' but rather Trading Permit Holders. Since its demutualization, the Exchange has attempted (and continues to seek to) replace the word ''members'' with Trading Permit Holders throughout the Rules for consistency purposes.

The Exchange also proposes to amend Rule 6.74A(b)(3)(F) to make clear the parties that may be entitled to receive a 50% portion of the remainder of the Agency Order at the final price level of an Auction. Current Rule 6.74A(b)(3)(F) provides that if the best Auction response price equals the Initiating Trading Permit Holder's single-price submission and only one Market-Maker matches the Initiating Trading Permit Holder's single price submission, then the Initiating Trading Permit Holder may be allocated up to 50% of the order. The Exchange proposes to add the word ''competing'' before ''Market-Maker'' in the second sentence of Rule 6.74A(b)(3)(F) and add the language ''with an appointment in the relevant option class or Trading Permit Holder acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order'' after ''Market-Maker'' to make clear that both Market-Makers with an appointment in the relevant option class and Trading Permit Holders acting as agent for an order resting at the top of the Exchange's book opposite the Agency Order may respond to Auctions and thus, may be present at the final Auction price. The Exchange notes that the proposed language is consistent with the current Rule and would also be consistent with the proposed changes to the auto-match rules in Rule 6.74A(b)(3)(G). The Exchange believes that these changes are non-controversial as they simply clarify the Exchange's already existing AIM rules. The Exchange strives for transparency in its Rules and believes these non-substantive changes will provide greater clarity for market participants. Finally, the Exchange proposes to add the word ''of'' to Rule 6.74A(b)(3)(G) to fix a minor typographical error in the rule text.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change protects investors and is in the public interest because it fairly distributes the allocation of the AIM order between the Initiating Trading Permit Holder and the Trading Permit Holder who responded when those Trading Permit Holders are the only two counterparties to the Auction and/or the number of contracts remaining at the final Auction price cannot be evenly distributed at the end of an Auction. The Exchange believes

[12] *See* Rule 6.74A(b)(1)(A).

[13] *See, e.g.,* NYSE MKT Rule 9.71.1NY(c)(5); PHLX Rule 1080(n)(ii)(E).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

that the proposed rule changes, like other price improvement programs currently offered by competing exchanges, will benefit investors by attracting more order flow as well as increasing the frequency that Trading Permit Holders submit orders to Auction, which may result in greater opportunity for price improvement for customers. Moreover, the proposed rule change is consistent with the Rules of other exchanges. With respect to the proposed clarifying additions and typographical corrections to Rule 6.74A, the Exchange believes that the proposed changes will benefit market participants by adding additional transparency and clarity to the Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are meant to more fairly distribute the order allocation when there are only two counterparties to an Auction auto-match order. The Exchange does not believe that this change will discourage any market participants from entering into the AIM, as the auto-match option of the AIM is more aggressive in terms of risk and therefore, increasing the allocation to up to 50% of the remainder for the Initiating Trading Permit Holder when there is only one competing order at the final price level is a more fair and reasonable allocation mechanism and would likely only increase the number of Trading Permit Holders that select the auto-match option to initiate Auctions.

Furthermore, the Exchange notes that the proposed rule change is a competitive response to similar provisions in the price improvement auction rules of BOX, PHLX and NYSE MKT.[17] The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various exchanges. The Exchange is also seeking the proposed rule change to align the allocation priorities for AIM single-price and auto-match submissions for Initiating Trading Permit Holders when there is only one competing order at the final price level within its rules. As mentioned earlier, auto-match submissions carry more risk than single-price submissions and as a result, should be given at least the same allocation priority as single-price submissions. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish more uniform price improvement auction rules on the various exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–043 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–CBOE–2015–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–043 and should be submitted on or before May 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11058 Filed 5–7–15; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* BOX Rule 7150; NYSE MKT Rule 971.1NY; PHLX Rule 1080.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0028]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2015–0015].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 7, 2015. Individuals can obtain copies of the collection instruments by writing to the above email address.

Authorization for the Social Security Administration to Obtain Personal Information—20 CFR 404.704; 404.820–404.823; 404.1926; 416.203; and 418.3001–0960–NEW. SSA requests respondents fill out Form SSA–8510, allowing SSA to contact a public or private custodian of records on behalf of an applicant or recipient of an SSA program to request evidence information which may support a benefit application or payment continuation. We ask for evidence information such as the following:

- Age requirements (*e.g.* birth certificate, court documents).
- Insured status (*e.g.* earnings, employer verification).
- Marriage or divorce information.
- Pension offsets.
- Wages verification.
- Annuities.
- Property information.
- Benefit verification from a State agency or third party.
- Immigration status (rare instances).
- Income verification from public agencies or private individuals.
- Unemployment benefits.
- Insurance policies.

If the custodian requires a signed authorization from the individual(s) whose information SSA requests, SSA may provide the custodian with a copy of the SSA–8510. Once the respondent completes the SSA–8510, either using the paper form, or using the Modernized Supplemental Security Income Claims System (MSSICS) version, SSA uses the form as the authorization to obtain personal information regarding the respondent from third parties until the authorizing person (respondent) revokes the permission of its usage. The collection is voluntary; however, failure to verify the individuals' eligibility can prevent SSA from making an accurate and timely decision for their benefits. The respondents are individuals who may file for, or currently receive, Social Security benefits, SSI payments, or Medicare Part D subsidies.

Type of Request: Information Collection in Use Without an OMB Number.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
* SSA–8510—Medicare Subsidy Quality Review (paper version)	3,500	1	5	292
SSA–8510—Title II and Title XVI general evidence (paper version)	19,800	1	5	1,650
** SSA–8510—Title II and Title XVI general evidence (MSSICS version)	140,145	1	5	11, 679
Totals	163,445			13,621

* Currently in use under OMB Number 0960–0707.
** New information collection which SSA will implement upon OMB approval.

Dated: May 4, 2015.

Faye I. Lipsky,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–11052 Filed 5–7–15; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on June 4, 2015, in Baltimore, Maryland. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: June 4, 2015, at 9:00 a.m.

ADDRESSES: City Crescent Building, 4th Floor, EEOC Conference Room, 10 S. Howard Street, Baltimore, Md. 21201. (The recommended parking option is to park at the Arena Garage, 99 S. Howard Street, Baltimore, Md.—for all available parking options, see *http://bit.ly/1F1wjWz.*)

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Regulatory Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Informational presentation of interest to the Lower Susquehanna Subbasin area; (2) election of officers for FY–2016; (3) the proposed Water Resources Program for fiscal years 2016 and 2017; (4) FY–2016 Regulatory Program Fee Schedule; (5) adoption of a FY–2017 budget; (6) regulatory compliance matter for Wyoming Valley Country Club; (7) Augusta Water, Inc. request for waiver of application required by 18 CFR 806.6(d)(1) and transfer of Docket No. 20021014; (8) Shrewsbury Borough Council (York County, Pa.) request for waiver of applications required by 18 CFR 806.4(a)(2)(ii); (9) notice for Four Seasons Golf Course project sponsor to appear and show cause before the Commission; and (10) Regulatory Program projects.

Projects, the fee schedule, and requests for waiver listed for Commission action are those that were the subject of a public hearing conducted by the Commission on April 30, 2015, and identified in the notice for such hearing, which was published in 80 FR 18276, April 3, 2015.

Opportunity to Appear and Comment

Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, *www.srbc.net.* As identified in the public hearing notices referenced above, written comments on the Regulatory Program projects, the fee schedule, and requests for waiver that were the subject of a public hearing, and are listed for action at the business meeting, are subject to a comment deadline of May 11, 2015. Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Any such comments mailed or electronically submitted must be received by the Commission on or before May 29, 2015, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: May 4, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–11051 Filed 5–7–15; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Additional Participants in Trade in Services Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: On January 15, 2013, the United States Trade Representative notified Congress of the Administration's intention to enter into negotiations for a Trade in Services Agreement (TISA) with an initial group of 20 trading partners. The January 15 notification states that the group negotiating TISA ''will expand as negotiations progress to include others who share our ambitious goals.'' In April 2015, the TISA negotiating participants reached a consensus decision to accept Mauritius into the negotiations. The Office of the United States Trade Representative (USTR) seeks public comments regarding particular priorities with respect to the participation of Mauritius in the negotiations. Comments may be provided in writing.

DATES: Written comments are due by noon, June 8, 2015.

ADDRESSES: *Submissions via on-line: http://www.regulations.gov.* For alternatives to on-line submissions please contact Yvonne Jamison at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For questions concerning requirements for written comments, please contact Yvonne Jamison at (202) 395–3475. All other questions regarding this notice should be directed to Christopher Melly at (202) 395–9581.

SUPPLEMENTARY INFORMATION: On January 15, 2013, Ambassador Kirk notified Congress of the Administration's intention to enter into the TISA negotiations. The following 20 trading partners constituted the initial group of TISA participants: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, European Union on behalf of its member states, Hong Kong China, Iceland, Israel, Japan, Korea, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, and Turkey. Paraguay and Liechtenstein joined the negotiations in September 2013. Uruguay followed in February 2015. USTR solicited public comments on the agreement through notifications published in the **Federal Register** on January 24, 2013 (Document number: 2013–01497), September 6, 2013 (Document number: 2013–21836), and December 17, 2014 (Document number 2014–29577). Comments received through that process may be reviewed at *http://www.regulations.gov.*

The Chair of the interagency Trade Policy Staff Committee (TPSC) now invites interested persons to provide written comments that will assist USTR in assessing U.S. objectives with regard to the participation of Mauritius in the negotiations. The TPSC Chair invites comments on all relevant matters, and, in particular, with regard to the nature of any existing barriers to trade in services with these markets or issues affecting the supply of services to these markets through various modes of supply and technologies.

Public Comment: Requirements for Submissions

Persons submitting written comments must do so in English and must identify (on the first page of the submission) ''Trade in Services Agreement: New Participant.'' In order to be assured of consideration, comments should be submitted by noon, June 8, 2015. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under the following docket: USTR–2015–0006. To find the docket, enter the docket number in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Comment Now!'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the ''Help'' tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''Type Comment'' field, or by attaching a document using the ''Upload File'' field. USTR prefers submissions to be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR also prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Comments'' field. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR strongly urges submitters to file comments through *http://www.regulations.gov,* if at all possible. Any alternative arrangements must be

made with Yvonne Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *http://www.ustr.gov.*

Public Inspection of Submissions

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Edward Gresser,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2015–11069 Filed 5–7–15; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, the State Route (SR) 85 Express Lanes Project from Post Miles 0.0 to R24.1 on SR 85, Post Miles 23.1 to 28.6 on United States Highway 101 (US 101), and Post Miles 47.9 to 52.0 on US 101 in the County of Santa Clara, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 5, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Cristin Hallissy, Branch Chief, Environmental Analysis Branch, California Department of Transportation, District 4, 111 Grand Avenue, Oakland, CA 94612; telephone 510–622–8717; email *cristin.hallissy@dot.ca.gov.* Normal business hours for the Environmental Analysis Branch are 8:30 a.m. to 5:00 p.m. (Pacific time).

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The SR 85 Express Lanes Project would convert the existing High-Occupancy Vehicle (HOV) lanes on SR 85 to express lanes and add a second express lane in both directions between SR 87 and Interstate 280 (I–280). The conversion of the HOV lanes to express lanes would allow single-occupant vehicles (SOVs) to pay a toll to use the lanes, while HOVs would continue to use the lanes for free. The purpose of the project is to manage traffic in the congested HOV segments of the freeway between SR 87 and I–280, and maintain consistency with provisions defined in AB 2032 (2004) and AB 574 (2007) to implement express lanes in an HOV lane system in Santa Clara County.

The express lanes would extend along the entire 24.1-mile length of SR 85 and 1.5 miles of US 101 from the southern end of SR 85 to Metcalf Road in San Jose. The project would also convert the SR 85/US 101 HOV direct connectors in San Jose to express lane connectors, add signs to 4.1 miles of US 101 north of SR 85 in Mountain View and Palo Alto and to 1.8 miles of US 101 between Metcalf Road and Bailey Avenue in San Jose, and add an auxiliary lane to a 1.1-mile segment of northbound SR 85 between South De Anza Boulevard and Stevens Creek Boulevard in Cupertino. The total project length is 33.7 miles.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on April 20, 2015, and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm#santaclara.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)].

5. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

6. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377].

7. Executive Orders: E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Matthew Schmitz,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2015–10555 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Projects in Florida

AGENCY: Federal Highway Administration, FHWA, DOT.

ACTION: Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal Agencies since October 2, 2014, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to the proposed CR 388 Segment 2 (Westbay Parkway) from SR 79 to SR 77 in Bay

County; SR 9B Extension in St. Johns County; SR 997/SW 177th Avenue/ Krome Avenue South in Miami-Dade County; SR 90/Tamiami Trail, milepost 13.87 to 24.62 in Miami-Dade County; SR 7 Extension in Palm Beach County; Palm Bay Parkway Southern Interchange in Brevard County; and SR 20 in Alachua and Putman Counties in the State of Florida. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the listed highway projects will be barred unless the claim is filed on or before October 5, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Cathy Kendall, AICP, Senior Environmental Specialist, FHWA Florida Division, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303; telephone: (850) 553–2225; email: *cathy.kendall@dot.gov*. The FHWA Florida Division Office's normal business hours are 7:30 a.m. to 4:00 p.m. (Eastern Standard Time), Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal Agencies have taken final agency action by issuing licenses, permits, and approvals for the projects listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented environmental assessment (EA) or environmental impact statement (EIS) issued in connection with the project, and in other project records for the listed projects. The EA or FEIS and other documents from the FHWA and other Federal Agency project records for the listed projects are available by contacting the FHWA or by using the links provided below.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351; Federal–Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act (CAA), 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d); Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq*.].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq*.]; Archaeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 20009(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501 *et seq*.]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 103(b)(6)(M) and 103(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

The projects subject to this notice are:

1. Project Location: Bay County, CR 388 Segment 2 (Westbay Parkway) from SR 79 to SR 77. Financial Project Number 424464–3–22–01. Project type: The project will widen CR 388 (West Bay Parkway, Segment 2) from a two-lane undivided roadway to a four-lane divided roadway, for approximately 12.8 miles. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the Finding of No Significant Impact (FONSI) issued on October 2, 2014, and are available at *http://westbayparkway.com.*

2. Project Location: St. Johns County, SR 9B Extension. Financial Project Number: 431418–2. Project type: The SR 9B Extension proposes a 2.3-mile extension of State Road (SR) 9B in St. Johns County from the Interstate 95 (I–95)/SR 9B interchange to County Road (CR) 2209, and also provides a connection to existing Race Track Road. Implementing Federal permits that have been issued include SJRWMD Permit #: 102025–6, 102025–7 and ACOE Permit #: SAJ–2014–01931(SP–AWP). The actions by FHWA and the laws under which such actions were taken are described in the EA and in the FONSI issued on November 3, 2014, and are available at *http://www.sr9b.com/Phase3/SiteCollectionDocuments/FONSI_EA%20-%20SR%209B%20Extension%20-%20APPROVED.pdf.*

3. Project Location: Miami-Dade County, Krome Avenue South (SR 997). Financial Project Number: 249614–4–22–01. Project type: Improve SR 997/SW 177th Avenue/Krome Avenue South (located north of Homestead) to address safety, capacity and design deficiency needs. The project limits are SW 296th Street (Avocado Drive) to SW 136th Street (Howard Drive) in Miami-Dade County, Florida. The actions by FHWA and the laws under which such actions were taken are described in the EIS and Record of Decision (ROD) issued on December 22, 2014, and are available at *www.kromesouth.com.*

4. Project Location: Miami-Dade County, SR 90/Tamiami Trail (US Highway 41), Tamiami Trail Modifications: Next Steps. Project Type: The project will implement roadway modifications to restore more natural water flow to Everglades National Park and Florida Bay for the purpose of restoring habitat within the Park and ecological connectivity between the Park and Water Conservation Areas. The project limits are between milepost 13.87 and 24.62 (west of Krome Avenue). This project will not add through lanes. The project will remove approximately 5.5 miles of existing 2-lane roadway fill embankment and construct an equal length of 2-lane bridging to replace the removed embankment. Remaining roadway and fill embankment will be slightly raised in elevation. The actions by FHWA and the laws under which such actions were taken are described in the adopted National Park Service EIS, ROD issued by FHWA on February 9, 2015, and are

available at *http://www.efl.fhwa.dot.gov/projects/tamiami-trail.aspx.*

5. Project Location: Palm Beach County, SR 7 Extension. Federal Aid No: 4752(030)P. Project Type: The project will extend SR 7 for 8.5 miles from SR704 (Okeechobee Boulevard) to SR809A (Northlake Boulevard). The actions by FHWA and the laws under which such actions were taken are described in the EA and in the FONSI issued on February 19, 2015, and are available at *http://www.sr7extension.com/home.htm.*

6. Project Location: Brevard County, Palm Bay Parkway Southern Interchange at I–95. Financial Project No: 426904–1–22–01 and 426904–1–22–02 Project Type: The project builds a new interchange that will directly connect the Palm Bay Parkway and Micco Road to I–95 just south of the City of Palm Bay in Brevard County. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the FONSI issued on February 25, 2015, and are available at *www.palmbayinterchange.com.*

7. Project Location: Alachua and Putnam Counties, SR 20. Financial Project No: 207818–1 and 210024–1. Project Type: The project will widen SR–20 from a two-lane rural roadway to a four-lane urban divided roadway with a raised median from US–301 to CR–315. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the FONSI issued on March 17, 2015, and are available at *http://www.nflroads.com/_layouts/FDOT%20D2%20Northeast%20Florida%20Road%20Construction/ProjectDetails.aspx?pid=12&sid=All.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Dated: April 23, 2015.

James C. Christian,

Division Administrator, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2015–10431 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0384]

Qualification of Drivers; Application for Exemptions; Hearing

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 12 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant these requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 12 individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 8, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0384 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be *achieved absent such exemption before granting any such requests.*

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0384'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0384'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

Thomas M. Carr

Mr. Carr, 50, holds a Class B commercial driver's license (CDL) in Pennsylvania.

Randy Ray Griffin

Mr. Griffin, 50, holds an operator's license in California.

William Hall

Mr. Hall, 35, holds an operator's license in Alabama.

Robert Chance Hayden

Mr. Hayden, 29, holds an operator's license in Florida.

Robert J. Knapp

Mr. Knapp, 47, holds an operator's license in Wisconsin.

Keith P. Miller

Mr. Miller, 37, holds an operator's license in Pennsylvania.

Ramoncito Sanchez

Mr. Sanchez, 34, holds an operator's license in Texas.

Bradly D. Sexton

Mr. Sexton, 36, holds an operator's license in Oklahoma.

Sandy L. Sloat

Ms. Sloat, 34, holds an operator's license in Texas.

Robert A. Toler

Mr. Toler, 31, holds an operator's license in Missouri.

Jeffry B. Webber

Mr. Webber, 53, holds an operator's license in Oklahoma.

Michael K. Wilkes

Mr. Wilkes, 50, holds an operator's license in Massachusetts.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business June 8, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

persons should monitor the public docket for new material.

Issued on: May 4, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–11121 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0115]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 18 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for up to 2 years in interstate commerce.

DATES: Comments must be received on or before June 8, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2015–0115 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov,* at any time or 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. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter to FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for up to a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 18 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket

number ''FMCSA–2015–0115'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2015–0115'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Ian Correll-Zerbe

Mr. Correll-Zerbe is a 26 year-old driver in Pennsylvania. He has a history of epilepsy and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since January 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Correll-Zerbe receiving an exemption.

Alan Feuerhelm

Mr. Feurerhelm is a 68 year-old class A CDL holder in Iowa. He has a history of epilepsy and has remained seizure free since 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Feuerhelm receiving an exemption.

Robert J. Forney

Mr. Forney is a 37 year-old class A CDL holder in Wisconsin. He has a history of a seizure disorder and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Forney receiving an exemption.

Henry Freiburger

Mr. Freiburger is a 42 year-old class A CDL holder in Wisconsin. He has a history of epilepsy and has remained seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since July 2014. If granted the exemption, he would like to drive a CMV. His physician states that he is not supportive of Mr. Freiburger receiving an exemption.

Timothy Kenneth Jameson

Mr. Jameson is a 41 year-old class A CDL holder in Utah. He has a history of epilepsy and has remained seizure since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Jameson receiving an exemption.

Bryan R. Jones

Mr. Jones is a 31 year-old class B CDL holder in Pennsylvania. He has a history of epilepsy and has remained seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Jones receiving an exemption.

Terri Kathleen Kahle

Ms. Kahle is a 49 year-old class A CDL holder in Pennsylvania. She has a history of a seizure disorder and has remained seizure free since 2004. She takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, she would like to drive a CMV. Her physician states that he is supportive of Ms. Kahle receiving an exemption.

Ivan M. Martin

Mr. Martin is a 56 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure since 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Martin receiving an exemption.

James Joseph Marvel

Mr. Marvel is a 64 year-old driver in Virginia. He has a history of epilepsy and has remained seizure free since 1967. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Marvel receiving an exemption.

Andy L. McNeal

Mr. McNeal is a 52 year-old class B CDL holder in Indiana. He has a history of a single seizure and resected brain tumor in 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. McNeal receiving an exemption.

Matthew J. Murphy

Mr. Murphy is a 32 year-old class B CDL holder in Wisconsin. He has a history of a single isolated generalized tonic-clonic seizure in November 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since June 2014. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Murphy receiving an exemption.

Richard S. Nelson

Mr. Nelson is a 79 year-old class A CDL holder in Minnesota. He has a history of a seizure disorder and has remains seizure free since 196. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Nelson receiving an exemption.

David J. Patterson

Mr. Patterson is a 52 year-old class B CDL holder in Minnesota. He has a history of a craniotomy and clipping of an aneurysm in 1988. He has no history of seizure and has never taken anti-seizure medication. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Patterson receiving an exemption.

Charles Eugene Sprenger

Mr. Sprenger is a 53 year-old class C CDL holder in Minnesota. He has a history of a single seizure in 2008 which was believed to be related to a meningioma which was surgically removed in 2008. He took anti-seizure medication after that time which was

discontinued in 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Sprenger receiving an exemption.

Edward Tuttle

Mr. Tuttle is a 54 year-old driver in Wisconsin. He has a history of epilepsy and has remained seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Tuttle receiving an exemption.

Mohammad S. Warrad

Mr. Warrad is a 54 year-old class B CDL holder in Iowa. He has a history of a seizure disorder and has remained seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Warrad receiving an exemption.

Michael D. Williams

Mr. Williams is a 48 year-old class A CDL holder in Nevada. He has a history of a seizure disorder and has remained seizure free since 1987. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Williams receiving an exemption.

Tyler David Williams

Mr. Williams is a 23 year-old driver in Pennsylvania. He has a history of epilepsy and has remained seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Williams receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: May 4, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–11123 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2015–0055]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SURYA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 8, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2015–0052. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SURYA* is:

INTENDED COMMERCIAL USE OF VESSEL: ''*Surya* is a fiberglass Catamaran. Build to sail offshore and very comfortable. It is not a performance Catamaran. The vessel is an PDQ Antares 42. Very well built with safety in mind. You can cross any ocean in almost any weather with a PDQ 42. I am intending to offer *Surya* for charter. It will not be a bare boat charter It will always be captained. It will be used for company events, sales evens, anniversaries.''

GEOGRAPHIC REGION: ''California''.

The complete application is given in DOT docket MARAD–2015–0052 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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).

By Order of the Maritime Administrator.

Date: May 5, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–11252 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2015–0052]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ARTHUR'S WAY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under

certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 8, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2015–0052. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ARTHUR'S WAY is:

Intended Commercial Use of Vessel: ''Private Pleasure Week Charters, Passengers Only as well as weekend charters as requested.''

Geographic Region: ''Florida, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine''

The complete application is given in DOT docket MARAD–2015–0052 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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).

By Order of the Maritime Administrator.

Dated: May 5, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–11253 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2015–0053]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ANATOLYA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 8, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2015–0053. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *ANATOLYA* is:

INTENDED COMMERCIAL USE OF VESSEL: ''Bareboat Charter and Skippered Day-Sailboating''

GEOGRAPHIC REGION: Florida.

The complete application is given in DOT docket MARAD–2015–0053 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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).

By Order of the Maritime Administrator.

Dated: May 5, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–11246 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2015–0050]

Request for Comments of a Previously Approved Information Collection: U.S. Merchant Marine Academy Candidate Application for Admission

AGENCY: Maritime Administration (MARAD), Department of Transportation.

ACTION: Notice and request for comments.

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 is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 18, 2015 (**Federal Register** 8755, Vol. 80, No. 32).

DATES: Comments must be submitted on or before June 8, 2015.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

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.

SUPPLEMENTARY INFORMATION:

Title: U.S. Merchant Marine Academy Candidate Application for Admission.

OMB Control Number: 2133–0010.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Affected Public: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Forms: KP 2–65.

Estimated Number of Respondents: 2,500.

Estimated Number of Responses: 2,500.

Annual Estimated Total Annual Burden Hours: 12,500.

FOR FURTHER INFORMATION CONTACT: Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93

Dated: May 4, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–11255 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2015–0054]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PINEAPPLE PRINCESS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 8, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2015–0054. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PINEAPPLE PRINCESS is:

Intended Commercial Use of Vessel: ''Day, overnight and weeklong outings, sunset cruises, wedding parties, harbor and near coastal sightseeing for 6 passengers as an OUPV.''

Geographic Region: ''Florida''.

The complete application is given in DOT docket MARAD–2015–0054 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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).

By Order of the Maritime Administrator

Dated: May 5, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 2015–11254 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2015–0101, Notice No. 15–6]

International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting and request for information on proposed alternative classification criteria for Class 8 (corrosive) materials.

SUMMARY: This notice is to advise interested persons that on Wednesday, June 10, 2015, PHMSA will conduct a public meeting to discuss proposals in preparation for the 47th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held June 22 to June 26, 2015, in Geneva, Switzerland. During this meeting, PHMSA is also soliciting comments relative to potential new work items which may be considered for inclusion in its international agenda and feedback on issues that PHMSA may put forward for consideration by the Sub-Committee such as enhanced recognition of alternative test methods relevant to the classification of corrosive materials (see further discussion under the supplementary information section below). PHMSA will also provide an update on recent actions to enhance transparency and stakeholder interaction through improvements to the international standards portion of its Web site.

Also, on Wednesday, June 10, 2015, the Department of Labor, Occupational Safety and Health Administration (OSHA) will conduct a public meeting (see Docket No. OSHA–H022K–2006–0062) to discuss proposals in preparation for the 29th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held June 29 to July 1, 2015, in Geneva, Switzerland.

Time and Location: Both meetings will be held at the DOT Headquarters, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

PHMSA public meeting: 9:00 a.m. to 12:00 noon EDT.

OSHA public meeting: 1:00 p.m. to 4:00 p.m. EDT.

Advanced Meeting Registration: The DOT requests that attendees pre-register for these meetings by completing the form at *https://www.surveymonkey.com/r/3XTD2TB.* Attendees may use the same form to pre-register for both the PHMSA and the OSHA meetings. Failure to pre-register may delay your access to the DOT Headquarters building. If participants are attending in person, arrive early to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for both meetings. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international* and at *http://www.osha.gov/dsg/hazcom/.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; 202/366–8553.

Supplementary Information on the PHMSA Meeting: The primary purpose of PHMSA's meeting will be to prepare for the 47th session of the UNSCOE TDG. The 47th session of the UNSCOE TDG is the first of four meetings scheduled for the 2015–2016 biennium. The UNSCOE will consider proposals for the 20th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019. Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html.*

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters
- Listing, classification and packing
- Electric storage systems
- Transport of gases
- Miscellaneous pending issues
- Global harmonization of transport of dangerous goods regulations with the Model Regulations
- Guiding principles for the Model Regulations
- Electronic data interchange for documentation purposes
- Cooperation with the International Atomic Energy Agency (IAEA)
- New proposals for amendments to the Model Regulations
- Issues relating to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

PHMSA specifically solicits comments relative to efforts by the UN TDG and GHS Sub-Committees relevant to enhancing recognition of additional Class 8 (corrosive) classification assessment methods that are currently included within the GHS but not within the UN Model Regulations for Transport. At its previous session the Sub-Committee considered a U.S. proposal that addressed optional methods for classification of mixtures based on pH and the use of ''bridging principles'' consistent with the current GHS. During the meeting a number of Sub-Committee members expressed support for the proposal in principle, but suggested the proposal should also address use of the ''additivity'' classification method consistent with the GHS. Based on comments received, PHMSA is considering submission of a revised proposal including the additivity method as an additional option while maintaining the methods addressed under the previous U.S. paper on this topic (see *http://www.unece.org/fileadmin/DAM/trans/doc/2014/dgac10c3/ST-SG-AC.10-C.3-2014-99_ST-SG-AC.10-C.4-2014-18e.pdf*). PHMSA continues to support the inclusion of alternative classification methods which ensure an equivalent level of safety while reducing the need for in-vitro and/or in-vivo testing where practicable. Comments on the Class 8 classification work, potential new work items which may be considered for inclusion in PHMSA's international agenda, or any working documents or informal documents to be considered at the 47th session of the UNSCOE TDG may be provided in person at the public meeting or via email to *PHMSAInternationalStandards@dot.gov.*

Following the 47th session of the UNSCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* PHMSA's Web site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UNSCOE TDG and related matters.

Supplementary Information on the OSHA Meeting: The **Federal Register** notice and additional detailed information relating to OSHA's public meeting will be available upon publication at *http://www.regulations.gov* (Docket No. OSHA–H022k–2006–0062) and on the OSHA Web site at *http://www.osha.gov/dsg/hazcom/.*

Signed at Washington, DC, on May 4, 2015.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2015–11104 Filed 5–7–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 314 (Sub-No. 7X)]

Chicago Central & Pacific Railroad Company—Abandonment Exemption—in Pottawattamie County, Iowa, and Douglas County, NE

AGENCY: Surface Transportation Board.

ACTION: Notice; correction.

SUMMARY: The Surface Transportation Board published a document in the **Federal Register** on February 11, 2015, which instituted an exemption proceeding pursuant to 49 U.S.C. 10502(b) for Chicago, Central & Pacific Railroad Company. The published document contained an incorrect milepost.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

Correction

In the **Federal Register** of February 11, 2015, at 80 FR 7682, correct ''milepost 511.7'' to read ''milepost 511.17.'' All other information remains unchanged.

Decided: May 5, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–11114 Filed 5–7–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 4, 2015.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or (206) 946–3006.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, June 4, 2015, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact: Janice Spinks at 1–888–912–1227 or 206 946–3006, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11232 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held June 2, 2015.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, June 2, 2015, at 1:00 p.m.. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11224 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2015. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
AARSHEIM	BRUCE	OLAF
ABDI	JENNIFER	ANDREA

Last name	First name	Middle name/initials
ABELL	HELEN	ANNE
ABT	CASSANDRA	NICOLE
ACKERMAN	ANNETTE	
ADAMS	GARY	MARCUS
ADAMS	MATTHEW	WEBSTER
AEBERSOLD	RUDOLF	HONS
AESCHBACHER-OFNER	PIA	MARGARITA
AGARWAL	ANDREA	RAKHI
AHN	SEJOONG	
AINEMER	LORI	
AINTABI	ERIC	
AINTABI	STEPHANIE	
AL-ABOOD	MAHMOUD	SHAKER
ALBERS	DANIEL	KEITH
ALBISSER	MIRIAM	ESTHER
ALICOT	VERONIQUE	JEANNE
ALLAIRE	PIERRE	
ALLAN	MATTHEW	JARRAD
ALLARD	FELIPE	SOTO
ALLARIE	ERIN	LYNNE
ALLEN	BRIAN	JOHN
ALLEN	DENISE	ANN
ALLUE	IONA	BARBARA
ALSTAD	MELANIE	MARIE TIESSEN
ALTAN	TUNC	
ALTEMEYER	MARTHA	JEAN
ALTEMEYER	ROBERT	ANTHONY
AMSTUTZ	STEPHANIE	
AN	CHON	JUN
ANDENMATTEN	ROBERT	WILLIAM
ANDEREGG	GEORGIA	LYONS
ANDERSON	BROCK	MATTHEW
ANDERSON	COLIN	PATRICK
ANDERSON	SUSAN	LEE
ANDINA	NICOLA	DANIELE
ANDREWS	DIANA	MARIE
ANGEHRN	JESSICA	ANNA
ANGEHRN	RICHARD	JOHN
ANGIO	JOYCE	MARIE
ANGKASUWANSIRI	THITI	
ANGUS	CATHERINE	LYNNE
ANTABI	TAREK	MALEK
APOSTOL	GEORGE	
ARENDAL	BIRGITTE	
ARIAS-FERNANDEZ	CARLOS	IGNACIO
ARIMOTO	RYUJI	
ARINO	MONICA	K
ARKOVA	YELENA	S
ARNOLD	WILLIAM	LEON
ASFOUR	FOUAD	B
ASHKAR	CHRISTELLE	
ATWOOD	DAVID	PAUL
AU	CHRIS	
AUBE	JASON	LEE
AUBRY	CHRISTIAN	CHARLES ALEXIS
AUDET	CARL	JOSEPH
AUDET	MICHELLE	JOYCE
AUYANG	ERIC	YANCHI
AYASSE	ALAN	RICHARD
BAARMA	LAMA	SAMEER
BACHMANN	URS	CHRISTOPH
BAE	JIHYUN	
BAILEY	ADRIAN	JOHN
BAIRD-STAMPFLI	ROBIN	ANNE
BALLESTEROS	CHERYLL	CRUZ
BALLHORN	BLAKELY	WILLIAM
BALLHORN	STUART	GORDON
BANU	LUANA	E
BARALLAT	LUIS	
BARBLAN	CHRISTINA	PATRICIA
BARDE	ALAIN	ROBERT
BARIL	JENNY	DOBBIN
BARNES	MARJORY	WILSON
BARTLEY	CLARISSA	ELISABETH

Last name	First name	Middle name/initials
BATTAGLIA	ELISABETTA	JANUARY
BATTESTI	CHRISTINE	DENISE
BATTESTINI	JEAN	
BAUDHUIN	ALAIN	JEAN
BAUTZ	EKKEHARD	KARL FRIEDDRICH
BAXTER	EMILY	BEATRICE
BEAUREGARD	CATHERINE	
BECK	ROBERTA	LYNN
BECKER	LUCAS	JUSTIN
BECKWITH	CHARLES	ALLEN
BECKWITH	THOMAS	GLENN
BEGHIN	ANNETTE	MARIE
BEHBEHANI	SALMAN	FOUAD
BEIJERBERGEN	MICHEL	G
BELANGER	YVON	JOSEPH PIERRE
BELL	MICHAEL	
BELLEROSE	NICOLE	MORIN
BELMONT-HAUBRICH	ARIEL	
BEMOUNT	STEPHEN	LOUIS
BENDER	BERTRAND	JAQUIER
BERG	ALLISON	LOUISA DENT NEMETH
BERG	JACLYN	LOUISE
BERG	NILS	HOLGER NEMETH
BERGER	DONALD	JOHN
BERGERON	NANCY	DIANE
BERNAL	LUCIO	
BERTHOUD	OLIVIER	EMILE
BERTOLI	LAURENT	PIERRE
BESKOW	PAUL	BERNHARD
BESPALOV	GEORGES	ANDREEVITCH
BIDWELL	JANET	ELIZABETH
BIRCH	GEORGE	CHARLES WARD
BISCHOFBERGER	LUKAS	JOHN
BLAND	DWIGHT	VINCENT
BLUA	COSTANZA	ELENA
BLUMER	DANIEL	JACOB FRIDOLIN
BOELS	VALERIE	CORRINE JACQUELINE
BOGEN	DAVID	OLAV
BOIVIN	JENNIFER	MARIE
BOLAM	CHRISTOPHER	
BOLLENDORFF-BAILEY	ELIZABETH	SUSAN
BONIN	ANNA	MAE
BONIN	JACK	
BONNEAU	VINCENT	MAXIME OLIVER
BORGHINI	AMELIE	
BOUCHARD	DENIS	PAUL
BOUCHARD	SHAWN	DEE
BOULANGER	MICHEL	JOSEPH
BOURGEOIS	ALEXIS	JASON
BOURGEOIS	JOACHIM	ISAAC
BOURLAND	KATHRYN	ELIZABETH
BOURQUIN	LUC	HENRI
BOWERBANK	ALEJANDRA	
BOWMAN	DORIAN	ALLARD
BOYER	BRUCE	STANLEY
BOYLAN	EVAN	CARL
BRACKETT	KAREN	SUSAN
BREAULT	ELAINE	CHRISTINE
BRESSON	JEAN	JACQUES RENE
BREWIS	CAROL	JEAN
BRIGGS	KATHLEEN	ELLEN
BRODSKY	DAVID	ARTHUR
BRON	SYBIL	NATHALIE
BROOKS	VICTOR	HAROLD
BROWN	ANDREW	DAVID
BROWN	CHRISTOPHE	DONALD
BROWN	JAMES	VINCENT
BROWN	KATIA	LYNN
BROWN	NORMAN	FRANCIS GRAHAM
BRUCE	DAVID	NATHAN DOUGLASS
BRUNOLD	ADELHEID	HEIDY
BUCHANAN	KATHERINE	LYNN
BUHLER	ALOYS	
BURGI	CHRISTINE	ELISA JENSEN

Last name	First name	Middle name/initials
BURKHART	LEILA	
BURWASH	JULIANNA	GRACE
BUXTORF	DOROTHY	JOYCE
BYRD	MARY	ANN
CADY	MELISSA	ELAINE
CALDWELL	FIONA	M
CALLAHAN III	CLINTON	COMINGS
CALMET-WOLF	EVA	CHRISTINE
CAMPBELL	SHERRYL	LYNN
CANDRIAN	JULIA	ELVINA
CANNINGS	KATHLEEN	
CANOVAS-GUTIERREZ	VANESSA	ISABELLE JAEGER
CARBONNEAU	DIANE	
CARLETTI	ROBERTO	ENRICO
CARLSON	EVELYN	
CARLUY-MOWREY	SONJA	MARIE
CARNEWAL	PASCALE	ANN
CARRIERE	DELANEY	ARLETA JEAN
CARTER	EIGO	DAVID
CASH	JOANNE	ELIZABETH
CASTANEDA	BOBBI JO	WITTMIER
CATHOMAS	LINUS	XAVER
CAVANAUGH	SEAN	MICHAEL
CELESTE	ALVIN	DEL FIERRO
CERF	EVELYN	CHARLOTTE PECHER
CERUTTI	PETER	ADRIAN
CHAN	ALVIN	CHIT
CHAN	CYNTHIA	HONG ENG
CHAN	DAVID	
CHAN	DAVID	CHUCK-YAN
CHAN	DIANE	MEI LAI
CHAN	ROCKY	YU
CHAN	SHANN	NICKOLEBY SIY
CHAN	WENDY	VICTORIA
CHAND	ASHWIN	PRAKASH
CHANG	PETER	
CHANG	VICKY	CHIUNG WEN
CHANG	YI	
CHARITOS	NORA	
CHASE	DOUGLAS	ALLAN
CHASE	JUANITA	LOUISE
CHASE	KATHRYN	LEE
CHATELAIN	ADRIANA	
CHAUVALLON	FRANK	GERARD PAUL
CHEDRAWY	ANTHONY	GEORGE
CHEKIJIAN	SAMUEL	
CHEN	HUANG	FENG-CHU
CHEN	JERRY	TSE-YU
CHEN	JUNG	JUNG
CHEN	KOK-CHOO	
CHEN	MENG	
CHEN	PHOEBE	HELEN
CHEN	TIFFANY	ELAINE
CHEN	YI	
CHENG	HAE-YUNG	HOLLY PENG
CHENG	HELENA	
CHENG	RONALD	CHUNG KEI
CHENG	STEPHANIE	HIS-SHAN
CHERPILLOD	SOPHIE	VALENTINE
CHEW	KAY	CHENG
CHIANG	CHIA	YU
CHIAO	PHYLLIS	
CHIN	DIANA	
CHISLETT	PAMELA	ANN
CHO	NICOLAS	
CHO	SPENCER	
CHOI	ELIZABETH	
CHOI	JAE	MOON
CHOW	ERNEST	HO HIN
CHRISTELER	STEPHANE	DANIEL
CHRISTIANSEN	LYNN	JOANNE
CHRISTOFFEL	MARIA	BRIGITTA
CHU	CHINN-JU	HWANG
CHU	JANE	KIT YING

Last name	First name	Middle name/initials
CHU	TIMOTHY	MAN
CIFUENTES	LYDIA	CORTES
CINTRA-ESKENAZI	EDUARDO	PALHARES
CISCO	JOHN	CLARK
CLARK	HEIDRUN	EDDA DORIS
COE	GERALDINE	ANN
COLLINS	PATRICK	CURT
COMESOTTI	JEANNE	ANNA MARIE
CONLEY	WILLIAM	BENJAMIN
CRANDALL	HAROLD	THOMAS
CRAWFORD	ANOUK	SIMONE
CRAWFORD	DONNA	PHYLLIS
CROOK	ROGER	A
CROSTHWAITE	JANET	CAROL
CSEBITS	TIBOR	NOEL
CUDDINGTON	DENISE	ALISON
CULLEN	JOHN	JOSEPH
CURJEL	STEPHANIE	BERNICE
DALBY	KEVIN	BULL
DANIEL	ANGELIQUE	YVONNE
DANIELS	LINDA	ELLEN
DAS	SHAMITA	
DAVENPORT	DAVID	DUANE
DAVENPORT	JACQUELINE	GAIL
DAVIS	ARLENE	HELEN
DAVIS	BARBARA	CARRIE
DAVIS JR	TREVOR	CROMBIE MAITLAND
DAYA	NAHEED	AKHTAR
DE BIEVRE	FREDERIK	
DE BLANC	MARIA	EULALIA MONEGAL
DE BRANTES	FLORE	SAUVAGE
DE CAPRONA	DENYS	JEAN-LOUIS CRAPON
DE GRACIA	REDENTOR	A
DE JONG	HAROLD	JELTE
DE KALBERMATTEN	CHRISTOPHER	GUILLAUME
DE KOVEN	DANA	LEAH
DE RIDDER	FLORENCE	ALISON ANNE
DE VEER	EDUARD	LODEWIJK JOSEPH
DE WILMARS	CHANTAL	ALEXANDRA MERTENS
DECOFINO	LESLIE	ANN
DEFOREST	MARGARET	RACHEL
DEFTY	PATRICIA	JANE
DEHAIES	STEPHANE	OLIVIER
DEHR	DIXIE	MARLANE
DEIN	GAVIN	ALEXANDER
DELACROIX	PASCALE	DE LHONEUX
DELEON	CHRISTOPHER	S
DELORI	HENRIETTA	MARY
DERRETT	CHRISTOPHER	
DETTLING	RUTH	MARIA
DEURING	NICOLAS	CHRISTOPHER
DEWAR	DOUGLAS	ADAIR
DI MONTERUBELLO	EDOARDO	ZEGNA
DIANOVA	VERA	GRIGORIEVNA
DICHNE-ARNOLD	ELIZABETH	BARBARA
DICKSON	GARY	
DIETRICH	DENISE	GABRIELLE FELBER
DIGGLEMANN	MYRTHA	BERTHA
DING	YUN	WEN
DION	DANIELLE	MURIELLE
DION	DENYSE	LYANE
DION	DINO	RICHARD
DIRIWAECHTER	ELLEN	MARIE
DISTEL	RITA	ELISABETH
DIXON	ANNE	ELIZABETH
DIXON	MARIA	HEDWIG
DOERING	OLIVER	REINHOLD
DOGGWEILER	REGULA	
DORN	SARAH	NATHALIE
DOSWALD	MONIQUE	CAROL-ANN
DOSWALD	PETER	JOHN
DOSWALD	RITA	
DOUCETTE	ERIKA	HEATHER
D'OULTREMONT	JEAN-STANISLAS	

Last name	First name	Middle name/initials
D'OULTREMONT	LAURENT	
DOUMONT	ISABELLE	CLAIRE
DOVE	NATALIE	
DOVER	HEATHER	MARIE
DOWSE	DAVID	PAUL
DOYLE	KYRA	MARIJKE
DRACOPOULOS	EUGENIE	MARY
DROUIN	MICHELINE	
DUBACH	CHANTAL	MARIA
DUCHARME-DALLYN	SETH	FREDERICK
DUFFIELD	MOLLY	JANE
DUGAS	KRISTINE	ANN
DUPONT	DANIEL	LAURENT
DVORAK	LEONA	PEARL
DVORINA	KRISTINA	
EBERSOLT	LOYS	ALAIN
ECKFELDT	JOHN	LAWRENCE
EDDE	THIERRY	JEAN
EGAN	MICHELLE	
EGAN	PATRICK	CHARLES
EGGLER	PETER	
EGLOFF	RICHARD	ALEXANDER
EICHENBERGER	BRIAN	ERWIN HERBERT
ELLIOTT	JANE	ANN
ERTL	ALAN	WALTER
ESPEHANA	JEFFREY	STEPHEN
ESTEVE, III	RAMON	M
ETHIER	WILLARD	DELORE
EUN	JIM	
EVANS	GEOFFREY	ERROL
EVANS	JESSICA	G M
EVANS	SOON-GEUM	
EYHOLZER	CARMEN	IRENE
EYHOLZER	DAVID	
FABINI	CLAUDIA	LAURA
FANNING	HEIDI	ELLEN
FARIA	VALERIE	ANN NETO
FAUSCH	JENNIFER	MICHELLE
FEATHERSTONE-WITTY	VIRGINIA	ALEXANDRA
FEHLMANN	MARIA	ELISABETH
FEILER	KERIM	LATIF FARID
FERGUSON	DOUGLAS	N
FILIPPELLI	JANET	ROSE
FINK	GOEFFREY	DARRELL
FISCHER	MARC	MANUEL
FISHER	GRETCHEN	
FITTERER	BIRGIT	MARIA
FITZGERALD	TIMOTHY	JOSEPH
FLEISCHMANN	FREDERICO	MANUEL
FLEURY	SUSAN	MARGARET
FLUCK	PATRIK	STEVEN
FLUCKIGER	CARINE	ANNE
FLYNN	JANE	CONE
FOGOLIN	LEE	JOSEPH
FOISY	JOAN	MARY
FOLEY	MICHAEL	J
FORD	ERIC	PATRICK
FORD	STAN	
FOREMAN	LESLEY	SUSAN
FORREST	MELISSA	KATE
FOURNIER	BENEDICTE	M
FOURNIER	EMILIE	ALEXANDERIA
FOURNIER	MICHELLE	LORRAINE
FOX	ASHLEY	N
FRANK	RYAN	CYRIL
FRAUENFELDER-CLEMENTI	JULIAN	
FREDERICK-PREECE	ALEXANDER	CLIVE
FREDERICK-PREECE	KATHRYN	ELIZABETH
FREI	ELISABETH	
FRENETTE	JASON	ROBERT
FRESCHAUF	GILMAN	SEVERANCE
FRIEDMAN	MICHAEL	
FRITZ	CHRISTINE	ELSBETH
FU	CHONG	

Last name	First name	Middle name/initials
FUCHS	MICHAEL	ALFRED
FULLER	JULIE	BETH
FULLERTON	SHAWN	MARGARET
FURNER	TIMOTHY	
GALEWITZ	BENJAMIN	SAMUEL
GALLOWAY	KELLY	LOOE BAKER
GAMBINO-BROOKS	EMILY	JEAN
GAMES	JAVIER	HANS
GANZ	CHRISTOPHER	ANDREAS
GARTNER	ISABELLE	INGA DANIELLE
GAXIOLA	ROBERT	JOSEPH
GBADEGESIN	ADEMOLA	
GERRARD	VANESSA	EDITH
GESING	HANNAH	BIRTHE
GESKES	GERARD	W
GESKES	JOSEPHINE	G
GIANVITI	PHILIPPE	VINCENT
GIBERT	DELFIN	
GIBERT	MARIA	
GIGON	CLAIRE	MARIE
GILL	KAREN	ANN
GILLOFFO	JAMES	HAROLD
GILMOUR	ANNE	ELIZABETH
GINSBURG	GERALD	ALBERT
GINSBURG	MARILYN	
GLINTON	BRYAN	ANTOINE
GOH	CLINTON	ZHENG DA
GOLAN	YAEL	SHIMOR
GOLDBERG	LESLIE	ANN
GOLINO	VALERIA	
GONZALEZ	LORENZO	MAURICIO
GOPALAN	GANESH	
GORMAN	TODD	ERIC
GORTAN	ALEXANDRIA	MARIA
GOTTRON	NICHOLAS	KU YU LONG
GOUDEY	KETTI	BETH
GOULD	DAVID	ADAM
GRAAFF	BRIGITTE	K
GRAAFF	WOLFGANG	J
GRACIA-RODRIGUEZ	EDUARDO	
GRAF	MIRIAM	LYNN
GRAHAM	CAROL	YVONNE
GRAHAM	ERIC	JOSEPH
GRAM	ERIN	LORRAINE
GRAM	JOHN	PATRICK
GRANT	DUNCAN	STEWART
GRAVATT	DAVID	ALLAN
GREEN	ALICE	TSUNG-REI
GREENLEE	STEPHEN	BARNETTE
GREGG	ELIZABETH	
GREIS	PETER	LEE
GRENIER	BERTRAND	VIANNEY
GRENIER	DOLORES	MARGUERITE
GRETZINGER	BERND	JUERGEN
GRINDLE	SCOTT	LEROY
GROSS	BARBARA	HELEN
GRUPP	ARON	L
GUALLINI	SANDRO	GILBERT
GUDJU	STEFAN	
GUERRA	ANA	LUISA
GUERRA	ANA	MARTA
GUERTIER	ROSEMARIE	
GUETHER	RALF	
GUNDERSON	JOSEPH	WILLARD
GUSTAFSON	MICHELE	FLORENCE CHARLES
GUTHRIE	MARTHA	JAMES MILLER
GUTHRIE	SHIRLEY	JANET
GYSLING	ROGER	
HAAS	SEBASTIAN	MARTIN
HACKWORTH	ROSS	AARON
HADADI	FARZAN	
HAEG	MARGARET	RAE
HAGEN	JOHN	ROGER
HAMERSLEY	LINDA	HILLES

Last name	First name	Middle name/initials
HAN	MEI	
HANEGREEFS	ASTRID	RAPHAELLE
HANEGREEFS	TIM	FRANS
HANSON	ROSS	COCHRANE
HARB	IRENE	KUPFER
HARBECK	JOHN	KENNETH
HARGRAVE	WALLACE	WYANEL
HARNDEN	LOIS	ELIZABETH
HARRIS	ROBBIN	JARRELL
HARTILL	TIMOTHY	JOHN
HARTL	EVELINE	SUSANNE
HARYETT	GABRIELA	SANDRA
HASEGAWA	KEIKO	
HATAMI	LILI	
HATTORI	MASAKAZU	
HATTORI	REIKO	
HATZFELD	STEFANIE	THERESA
HAUSER	ALBERTO	DANIEL
HAUSER	REINHARD	
HAUSLER	BRIANA	MAGDALENA
HEALEY	PAMELA	ELIZABETH
HECKER	MARCELLE	DIANA
HEDQVIST	AYSE	GUL
HEGLAND	ANNETTE	SUE
HEIDERMANN	JAN	PETER
HEIN	JANELLE	LYNN
HENDERS	LINDSAY	DAWN
HERMANN	JUDITH	AUDREY
HERRMANN	EUNHWA	
HICKEY	ALTA	LYNN
HICKEY	LAURENCE	MICHAEL
HICKEY	TRAVIS	EDWARD
HILDRETH	MARTYN	A
HILLENBRAND	KRISTIN	JENNIFER
HINSHAW	MATTHEW	LAMONT
HIRAKAWA	MATTHEW	CARR
HIRSCHI	ANGELINA	YVONNE
HOELLRIEGL	ELDRED	MARY
HOLDGATE	KAI	THOMAS EDWARD
HOLLAND	GAIL	DAVIES
HOLMES	DAVID	ALAN
HOLMES	LILLIAN	FAY
HOLT	JOHN	GRATTAN
HONG	OK	JA
HORAN	CATHRYN	M
HORAN	DENNIS	K
HOREL	KIRSTEN	LIESE
HOWARD	ALISON	FRANCES
HSIAO	YA	WEN
HSIEH	EN-LING	
HSIN	IVAN	
HSU	DEBRA	
HSU	JASON	
HSU	JULIA	
HSU	SAMUEL	SAN-BAN
HU	KER	DIN
HUANG	CHARLES	KANT
HUANG	HER	
HUANG	JACK	
HUANG	YIMIN	
HUBAI-MUHLEN	LINDA	PATRICIA
HUDSON	LOUISE	PATRICIA
HUNNINGHAUS	JUDITH	
HURD	MARIANNE	RIBER
HYRVE	RUTH	ANN
IBIRICU	BERNICE	DE D'ABBADIE
IMMENHAUSER	ADRIAN	MARK
INAUEN-VON HOLTEN	MARTINA	ANDREA
INNES	HELEN	MILDRED
IRMINGER	DENIS	ERIC
IRMLER	CHRISTINE	JOSEPHINE
IRWIN	JAMES	MICHAEL
JACKSON	SYLVIA	CARLENE
JALIL	PUTRA	PERKASA ABDUL

Last name	First name	Middle name/initials
JAMES	PHILOMINA.	
JANSSEN	NICOLE	LYN
JAVANTHEESWARAN	SUJA	
JEAN	PIERRE	DENIS
JENG	AMY	
JERKOVIC	GINO	
JIRDEH	FARAH	
JOE	MINJI	
JOHANNSON	GAYLE	ANNETTE
JOHNSON	MADELINE	JOY
JOHNSTON	DEBORAH	RUTH
JOHNSTON	EILEEN	RITA
JONES	DANIEL	MARK
JONES	LARRY	NATHAN
JOPLING	FREDERICK	HAIGH
JORDAN	DAVID	
JORDAN	NATASHIA	MELTEM
JOSEPH	MICHELLE	CLAUDIA
JUNKIN	NOREEN	E
JURICEK	GIAN	PAOLO
KABAR	FIRAS	
KADI	JOE	FAEHAT
KALAVSKY	ANNTRAUD	
KALIMTGIS	EVANGELLOS	
KALLSTROM	DANIEL	ARNOLD
KANADE	TAKEO	
KANADE	YUKIKO	
KANG	YOUNG	HEE
KAUFMANN	CHRISTINE	ANNA
KAUFMANN	ERIC	MARCEL
KAUFMANN	MARC	CHRISTOPHER
KAUMANN	DEBORAH	
KAWAKAMI	MIYUKI	
KEARSEY	PATRICK	ALEXANDER
KEET	JUDY	ANN
KEIM	ROBERT	GORDON
KELLER	KAROLINE	
KELLY	JOHN	WILLIAM
KELLY	STEVEN	KENNETH
KEMPLING	LINDA	KATHERINE
KENRICK	ANN	
KENT	HEATHER	TAMSIN
KERSTING	HANS	EDWARD
KESSELER	CLAUDE	JANINE
KHAN	ABDUL	WAHEED
KHOU	JERVAN	
KIANGSIRI	JAIMIE	RUKSHANOK
KIM	HYUN	SIK
KIM	HYUN-JIN	
KIM	JUSTIN	SUNGKYUM
KIM	SANG	HO
KIM	YUN	OAK KAUFMANN
KING	ERIC	RICHARD
KING	ZACHARY	ANDREW LUCAS KYLE
KINGHORN	ELLEN	LOUISE
KIRBY	PAULINE	MARIE SIGRID
KIROSKA	CAROLINE	EILEEN
KIRYLO	DANIELE	
KNUTSEN	KAREN	SUE PATRICK
KOBAYASHI	SHARON	LEE
KOENIG	QUINTIN	E
KOHL	CHRISTINE	
KOHLIK	SUZAN	I
KOLES	ANDREW	MICHAEL
KOLLERT	ANGELICA	MARIE
KONDRATIEVA	LIA	
KOSIUR	AUDREY	LORRAINE
KOTHNY	WOLFGANG	C
KOURUKLIS	ALEJANDRO	BASILIO
KRAGH	MERETE	
KRAGH	SOREN	
KRUEGER	MARKUS	WILHELM
KRUITHOF	KIM	ELISE
KRUPER	CHERYL	ANN

Last name	First name	Middle name/initials
KU	ALAN	AN SHENG
KUBIK	ERIKA	DAWN
KUERSCHNER	SAPHIRA	ANN
KUMAR	MIMI	SAURAJEN
KUNATH	GEORG	FRIEDRICH
KUNDER	ERIC	CHRISTOPHER
KUNZ	DENISE	CORNELIA
KUNZ	HEDY	
KUNZ	VICTORIA	ELISABETH JOYCE
KUO	REYNOLD	LUN-HUNG
KUO	STEPHANIE	SU-TING
KURODA	MITSURU	
KWAN	CLARENCE	SIU
KWAN	JULIUS	SHEN TIEN
KWAN	MATTHEW	TAI FAI
KWON	RICHARD	O
KWUN	MICHAEL	JOON-BUM
KYRIACOPOULOS	FLORA	MARIA
KYRIAKOPOULOU	LELY	
LAHODA	ANDREE	LOUISE
LAI	LEE-WEN	CHEN
LAM	CHI	HUNG
LAM	ESTHER	KAN HING HGAO
LAM	JESSICA	HARR
LAM	KELVIN	HONG HANG
LANG	ANDREW	WILLIAM
LANGAN	MARC	DOMINIQUE
LANGKAU	FRIEDERIKE	KATHARINA
LARSSON	LISA	BETH
LATTA	ROBERT	LESTER
LATTEIER	JAMES	LOCKETT
LATTEIER	JAMES	LOCKETT
LATTEY	LAURA	RENEE
LAUSUND	BRIAN	THOMAS
LAVER	KIM	BERTRAND
LAYZELL	LAWRENCE	
LAYZELL	MARGARET	S
LE GALL	PATRICK	
LE HODEY	CHARLES	JUAN
LE POIDEVIN	IAN	MATTHEW
LEBARIC	KATARINA	
LEE	ALAN	HSIN-LUN
LEE	ALEX	
LEE	CHUN	H
LEE	DAHAN	
LEE	ELLEN	WONG
LEE	JENNIFER	OY-C
LEE	KATHERINE	NATTY
LEE	KIYOUNG	
LEE	MICHELLE	
LEE	WILLIAM	TEHYEE
LEE	YUN	H
LEEK	MARCUS	ANDREW VANDER
LEFORT	CAROLINE	VALENCE
LEIGH	ROBERT	SCOTT
LEO	SHEIRLY	
LESLIE	SHONA	S
LEUENBERGER-ROIHA	MONIKA	MARIA
LEUTHOLD	ULRICH	
LEVERT	CARMEN	STEPANIE
LEVINSON	GARY	ELDEN
LEVY	JONATHON	SALOMON
LEWIS	NINA	PATRICIA
LEYBMAN	MISHA	
LI	AUDREY	
LI	JOHN	YU-HSIEN
LICHTMAN	BURTON	KALOM
LIEBERHERR-PUGH	LISA	
LIN	DAVID	
LIN	JACK	
LIN	JOHN	JENHO
LIN	KATHY	T L
LIN	KUNSI	
LIN	PING	LUN KEVIN

Last name	First name	Middle name/initials
LIN	STEVEN	
LIN	WEN-I	
LIN	YEN	HUNG
LIN	YI	HSUAN
LIN	YI	HSUAN
LING	YU-WEN	
LITTLE	JULIA	MARIE
LIU	CHIAMIN	
LIU	CHIH-HUI	
LIU	EDWARD	
LIU	IAN	
LIU	LU	
LIU	MINGYI	STEIM
LIU	WEI-TING	
LIU	WELLINGTON	YEU AN
LIU	XIAO	DAN
LOCK	DEBRA	LOU
LOFFLER	GIANIN	ANDREAS
LOHMUELLER	UTE	VIRGINIA
LOHRMANN	DAVID	CHARLES
LONG	LLOYD	GEORGE
LORENZETTI	ENRICO	CARLO
LOSADA	JAVIER	
LOSADA	MARIA	DEL PILAR
LOVELL	WILSON	ALFRED
LOWEN	MICHAELA	MARIA THEUX
LU	HUNGEN	
LU	P	NICHOLAS
LU	YUCHUNG	
LUI	ALICE	MON-WAH
LUI	ANDREW	NICHOLAS
LUKE	ERIC	IVAN
LUND	ELLEN	STANG
LUNDEBERG	LARS	CHRISTER
LUTES	DARA	NOEL
LUTZ	DEAN	WILLIAM
LUTZ	MARGARET	ANN
LUYCKX	OLIVER	ANDRE
LYTLE	KENNETH	ALVIN
MA	HONG	
MA	MICHAEL	WEI-CHEN
MA	NICK	
MA FAURE	AMY	TA-HUI
MACISAAC	JOY	KATHLEEN
MACKENZIE	CATHERINE	ANNE
MACKEVETT	DOUGLAS	NAT
MACKIE	AARON	PRESTON
MACKINTOSH	MARJORIE	CAROL
MACLEOD	LAURIE	ANN
MACZAN	PAWEL	
MAECHLING	SIMON	
MAEDLER	SUSAN	URSULA
MAGIS	SHERRI	LYNN
MAHANTY	LARA	NAMITA
MAIER	DIANA	HAZEL
MAIZE	CHRISTOPHER	
MALONEY	CATHERINE	ANN
MANDRALIS	ZENON	IOANNIS
MARGOLYES	MIRIAM	
MARISCAL	MARIA	DEL PILAR
MARSHAL	MERRILL	LAYNE
MARSHAL	PAULETTE	FAE
MARSHALL	KEITH	SPENCER
MARSHALL	THERESE	SCHEURING
MARTI	CORRINE	LEE
MASEK	CHRISTOPHER	PATRICK
MATHIEU	ANTOINE	PIERRE EMMANUEL
MATHIS	MONETTE	ANN
MATHISEN	SVEN	ROSS
MATTMANN	ROGER	HANS-RUDOLF
MAUNDER	LOIS	JANE
MCGOWAN	DAVID	ANTHONY
MCCANN	ALLISON	MARY GROCHOWSKI
MCCLELLAND	LEONA	MARIE

Last name	First name	Middle name/initials
MCCULLOUGH	JOANNE	M
MCLEOD	LAURA	JANE
MCMANEMIN	LYNETTE	MARGARET
MEDINA-MORA	ANDRES	
MEEN	MARIANNE	
MEIJER	MACHTELD	ANITA
MERCHANT	VIVIAN	EDWARD
MERONEK	LESLIE	LEANN
MESSINA	FRANCESCA	
MESSINGER	JAMES	ALLEN
MESZAROS	TIBOR	DANIEL
MEYER	LEILA	ELISE
MEYER NIENHAUSE	BRIGITTE	PAULA
MEYHACK	THOMAS	
MEYRE	PHILIPP	TROY
MIAO	CHI-ZING	KELLY
MICHEL	LISELOTTE	MARIANNE
MICHEL	MARC	FRANCOIS-MARIE
MIDDELKOOP	KATINKA	I
MIHIC	NIKOLA	
MILANOVIC	MARIO	
MILLER	CRAIG	LANE
MILLER	GORDON	E
MILLER	KANDIS	LYNN
MILLER	LANCE	ROSS
MILLER	MICHAEL	DAVID
MILLS	JULIA	PATRICIA
MIMRAN	VANESSA	DELPHINE
MINTZ-WEBER	CAROLYN	SUSAN
MITCHELL	JOANNE	EUDORA
MOATS	DANIEL	JAMES
MOELLENHOFF	LYDIA	NICOLE
MONTAGNE	JAN	DIEDERIK
MONTINI	MARC	RAYMOND
MOORE	DAVID	SAMUEL GAILEY
MOORE	WENDY	LYNN
MORGAN	COLEMAN	JOHN
MORGAN	JOHANNA	M
MORILLAS	VERONIQUE	ANNE
MORISON JR	THOMAS	JAMES
MORRISON	JAMES	FREW
MORSI	PERIZAD	FATHI ABAS
MORTIMER	HARRIET	LOUISE
MOSES	CHERYL	ANN
MOU	KEVIN	HANNREN
MOULIN	ALICE	ELIZABETH
MOUNT	JEFFREY	MARK
MOUNT	KENNETH	STEPHAN
MUELLER	LISA	ADELE BENJAMIN
MUNOZ	ERIC	
MURNER-PATTEN	CYNTHIA	ANN
MURRAY	ALISON	KING
MURRAY	MARY	ANN
MURRAY	NANCY	ELLEN
MURRELL	DIAN	LEE
MUSGRAVE	THOMAS	STEFAN
MUSGRAVE	THOMAS	STEFAN
MUTH	MARK	PHILIP
MUTZENBERG	STEFAN	RUDOLPH
MYSHKIN	OLEG	ALEKSEYEVITCH
NAGAOKA	MASAYUKI	
NAGAOKA	NORIKO	
NAGY	IMRE	
NARANJO	ANGELA	MARIA
NARANJO	JOSE	HERNANDO
NAT	MARGRIT	RUB
NEARY	RICHARD	PATRICK
NEEDHAM	NICOLE	ANDREA
NEIRYNCK	MAHE	SANDRINE
NELSON	JULIET	MARIE
NELSON	WINSTON	ALLEN
NG	CHRISTOPHER	TIAN WEI
NG	SHEILA	JANE ONG
NG	WAI	HONG

Last name	First name	Middle name/initials
NG	YIN-MEI	
NG	YUK	FONG
NICKL	JUDITH	C
NICKL	WOLFGANG	U
NICOD	NATHALIE	MARIE
NIELSEN	CHARLES	WILLIAM
NIEMEYER	ALEXANDRA	KATHARINA
NIGGELER	ELEANOR	
NIUNOYA	KEIKO	
NIUNOYA	TAKEO	
NOGUCHI	KEN	
NOORBAKHSH	LILIAN	FATIMA
NORCROSS	JAMES	PAUL
NOUR	HILDA	ARIAS ABDEL
NOVOSELSKIY	ROMAN	
NUESCH	STEFAN	FEDERICO
NUSSBAUMER	MICHELE	MARY
NYDEGGER	MICHAEL	
OBERLANDER	WENDY	ELIZABETH ROSE
ODDY	CHRISTINE	ELIZABETH
OHRI	CHANDNI	G
OKADA	RENA	LAUREN
OKAMOTO	NAOYUKI	
OLINSKY	NEIL	
OLIVER	CAROLE	ELIZABETH
OM	MISEON	
ONG	DEBORAH	JOY
ONG	ENG-LYE	
OPLE	BARBARA	ANNE
OROZCO	MARIA	ELENA URREA
OSBORNE	WILLIAM	MICHAEL
O'SHAUGHNESSY	SUSAN	BEECHER
OSMENA	ISABEL	LOPEZ
OSWALD	MAJA	
OTTINO	CHRISTIAN	PAUL
OTTO	ANDREW	TED
OUSSEIMI	MOHAMED	
OVERTURE	DALE	N
OVERTURF	ANDRES	TIMOTHY
OWEN	GARY	ROBERT
PACE	JENNIFER	ANN
PAK	DONG	HEE
PALLAVICINI	STEPHAN	HART
PALMER	MAX	JAY
PALMER	STEVEN	WILLIAM
PAN	GLORIA	
PAQUET	PAUL	CHARLES FRANCIS XAVIER
PAQUETTE	KYOUNG	
PAREDES-CANEVARI	FELIPE	ALBERTO
PARK	ANDREW	
PARK	JUNG	SUCK
PARK	JUNGSIK	
PARK	KYUNGHWA	
PARKAN-MOESCHLER	LUCIENNE	
PARKER	EUGENIE	SUZANNE
PARKER	JARRETT	DEAN
PARKES	ANDREW	J
PARKINS	JOHN	RUSSELL
PARRY	RICHARD	BRYAN NAVARRETTE
PARSONS	JOHN	DAVID
PARSONS	JUNE	
PATEL	PRAVINCHANDRA	MULJIBHAI
PATTERSON	JAMES	MICHAEL
PEARSON	MELISSA	KAY
PEARSON JR	JOHN	WARREN
PECK	DAVID	NORRIS
PEJAN	CYRUS	
PELEG	GABRIELLA	
PELEG	SHMUEL	
PELLET	ARK	PETER
PELLISSIER	LOUIS	CALVIN
PEN	MAY-LI	FU
PENDERY	DARREN	FREDERICK
PENG	HUAN	RONG

Last name	First name	Middle name/initials
PENSAERT	MARK	RICHARD CLARA
PEPPER	MARK	E
PEREZ	ALEXANDER	ALBERT MICHAEL
PERKINS	LAURA	HALLIE
PEROTTO	LAURA	ADRIANA
PEROTTO	OSCAR	MARCELO
PERRETT (NEE CLEMENT)	SARAH	ELIZABETH DOROTHY
PETERMANN	GENEVIEVE	JOYCE
PETERS	RENATE	
PETIT	KATERINA	DEBORAH
PETRIE	RICHARD	GORDON
PETTENGILL	SHONA	MARIE
PETTIS	RONALD	FLOYD
PETTIT	WAYNE	D
PETTMAN	IAN	
PEYER	SEAN	MICHAEL
PFISTER	ANNE-LAURE	SUZANNE
PFISTER	MICHAEL	JOSEF
PIANTA	DANIELA	MARTHA
PICTET	CLAIRMONDE	ISABELLE
PIERONI	DANIELLE	BRIDGET
PIRIE	PETER	FREDERICK
PLANE	DANIEL	ROLAND
PLESKO	ROCHELLE	LEONA
PLOSTON	JUDITH	ANNE
POIRE	MURIEL	
POLLAK	ROBERT	
PONS	BOBBY	STANLEY
POON	PATRINA	
PORRET	ALAIN	SERGE
PORTER	BRIAN	K
PORTER	NELSON	KEELER
PORTMANN	CAROLINE	VERENA
POTVIN	CLAUDE	LAURENT
POURCINES	ELISABETH	ROSA GROB
POWELL	CHARLES	LUKE
PRESWICK	BARRY	ALEXANDER
PRETOR-PINNEY	LAURA	HAIGHT
PRINS	MARINA	
PROCTOR	JAMES	SCOTT
PROMPHAN	TIPORN	
PUNTER	LINDA	ELLEN
QUADRI	VIVIANE	
QUAIL	DOUGLAS	WILSON
QUAN	WALTER	KEOKI
RACH	SEAN	ALLEN
RACY	MAYYA	
RAHM	CHRISTINE	SUZANNE WIDMER
RALSTON	BARBARA	JOY
RAMER	WILLIAM	DAVID
RAMIREZ	SOFIA	ISABEL
RAMSEY	HEATHER	RENEE
RANADIVE	MANDA	
RANKIN	SCOTT	ALLAN
REDDY	PAVAN	
REDMOND	PATRICIA	ANN
REEVES	CATHERINE	ANN
REEVES	JEANINE	FRANCES
REGNIER	CONSTANCE	MARIANNE
REGNIER	STEPHANE	A
REHSTEINER	FELIX	CARL
REHSTEINER	SUSANNE	REGULA
REICHL	PAVEL	
REINHARDT	LUZIAN	COLIN
REISWIG	ANN	MARIE
REISWIG	HENRY	MICHAEL
RENIERI	AUGUST	LEANARD
REPRESAS-GIL	MARIA	LETICIA
RESENDE	ANTONINA	
RESTALL	LAETITIA	SUSAN
REXIN	MARILYN	JEAN
RICHARDSON	HELEN	E
RICHARDSON	NIGEL	
RICHTER	BARBARA	

Last name	First name	Middle name/initials
RICHTER	MARION	ELISABETH
RIGERT	BERNADETTE	MARIE
RILEY	BARBARA	ANN
RINGWALD	LESLIE	
RINK	CHARLES	TIMOTHY
RITACCO	ROBERT	PATRICK
RITZ	STEFAN	P
RIZWAN	ADIL	
ROBERTS	KEITH	TEXAS
ROBERTSON	MICHAEL	THOMAS
ROBINSON	DRUE	JANE
ROBINSON	JAMES	BERESFORD
ROBINSON	MEGAN	FIONA
ROBINSON	MELINDA	POWELL
ROCHAT	EILEEN	JOANNE
ROCHE	BRYAN	DAVID
ROCKEL	RETA	VIOLA
RODER	JENNIFER	CHRISTINE
ROIG	MIGUEL	ANTONIO
ROM	EMANUEL	D
ROMANO	LORENZO	MARIA
ROMANYCIA	BILL	EMIL
ROMANYCIA	MORGAN	ASHLEIGH
ROMANYCIA	WILLIAM	STANLEY
ROSE	SUSAN	MARGARET
ROSS	CAROLYN	HUNTER
ROTH	NANCY	CLAIRE
ROTHENBERGER	IRENE	
ROUFOSSE	MICHELINE	CLAUDINE
ROUSSEAU	CARL	JOSEPH
ROUSU	DONALD	CARTER
ROUSU	RUTH	ANN
ROWLAND	ANN-MARIE	
ROY	GINETTE	
ROY	JENNIFER	LYNNE
ROY	MICHELINE	
RUDINSKY	HELEN	
RUDNICK	STUART	ELLIOT
RUDSTON-BROWN	MELODY	KATHLEEN
RUESCH	ROBERT	JOHN
RUF	ALFRED	
RUF	MAJA	
RUZIO-SABAN	GJOKO	TOMAS CHARLES
RYAN	AISLING	EMMA
RYZHKOV	PETR	GRIGORYVICH
SACKELA-GEIGER	ALEXA	
SACKELA-GEIGER	HALEY	
SADIK	AL-SHARIFA	DINA WAEL
SAGMANLI	EROL	MUSTAPHA
SAGMANLI	OSMAN	OMER
SAHGAL	GAUTAM	GIORGIO
SAHNI	JITENDER	SINGH
SALKA	JEFFREY	HOWARD
SAM	SYDNEY	
SANSONI	MARTINA	EDOARDA
SANTANGELO	DAVID	ELMER
SARTORI	CLEMENT	ROMANO
SAUNDERS	KATHLEEN	BRIDGET
SAW	SHEAN	HUEI
SAWBY	EDWARD	JEROME
SAWYER JR	JOHN	SHERMAN
SCHENCKING	JOHN	CHARLES
SCHERK	MARGARET	ANNE
SCHIEGG	LAWRENCE	WERNER
SCHLENKER	PHILLIPPE	
SCHMALCEL	KELLY	JANE
SCHMALZRIED	MARTIN	
SCHMID	CENDRINE	CHANDRA
SCHMID	GABY	
SCHMID	LAI	YIN
SCHMIDT	COLLEEN	ANNE
SCHMITZ	ANDREA	LOUISE
SCHNEEBERGER	SUZANNE	VIRGINIA
SCHNEIDER	ELISABETH	MAUREEN

Last name	First name	Middle name/initials
SCHNIDER	ROLAND	ERNEST
SCHOTANUS	SHIRLEY	FRANCES
SCHRODER	GEORGE	
SCHUH	DORIS	MAE
SCHWEHM	JOHN	FREDERICK
SCHWEIGHAUSER	MARTIN	ANDREW
SCHWEINGRUBER	SIMON	CRAIG
SCHWEITZER	IAN	ALAN
SCIARRONE	JOSEPH	WILLIAM
SCIMONE	STEPHEN	ANTHONY
SEARA	INES	MARTINS ROBOREDO
SEBASTIEN	MARIE	
SEET	MONICA	JIN LI
SEGRE	STEFANO	
SEHEULT	BRENDA	GERTRUDE PIRIE
SEIDEL	ANTON	R
SEIDEL	SUSANNAH	CLEA
SEILER	PAUL	
SENN	CLAUDIA	NINA
SERVATY	GERALD	L P
SEUNG	ERIN	HEESOO
SHARP	ERIN	LESLIE
SHARP	RANDALL	FREDERICK
SHAW	TERESA	FAN SCHRIN
SHERGINA	OLGA	
SHERMAN	ULRIKE	A
SHERWOOD	RUSSELL	THOMAS
SHIAU	HOBIN	SMART
SHIN	DAVID	DONGJOON
SHIN	JUNGWON	
SHIPTON	JOHN	VICTOR
SHIPTON	TIMOTHY	JAMES
SHRAGGE	LESLIE	GULOIEN
SILVY	CAROLINE	RENATA GRAMLEY
SIMAS	KATHLEEN	ANN
SIMCIC	MARGARET	VOISIN
SINGER	ADAM	
SKIPP	DENISE	GOODE
SLADDEN	MICHAEL	B
SMETANA	SABRINA	ANN
SMITH	CAROLYN	
SMITH	DARRELL	WAYNE
SMITH	J	BARTLETT KEMP
SMITH	JANE	DAPHNE
SMITH JR	DANIEL	SCOTT
SMITHERS	AMELIA	OTWAY
SOKOLOVE	EUGENE	GUENNADEVICH
SOLAND (AKA LACOURTE)	CAROL	VIVIAN
SOLARI	MARIA	IGNACIA
SOLIS	MARIELA	POCHON
SOLOVYOV	ALEXANDER	
SONDEREGGER	JACQUELINE	YVONNE
SONG	ANDREW	JUHWON
SOONG	YI-DEH	KENNY
SPAHN	STEPHANIE	GABRIELA
SPARKE	CAROLE	JACQUELINE
SPENCER	CHRISTOPHER	CURRIER
SPYCHER	MARICEL	
ST GERMAIN	KITANOU	
ST JOHNSTON	THOMAS	ALEXANDER
STAARTJES	LUCY	PAULINA
STAHEL	ANINA	BARBARA JENNIFER
STAHEL	PAMELA	
STAHELIN	ANDREAS	CHRISTOP
STAHN	GREGORY	ALLAN
STAHNKE	JEAN	LOUISE
STAHNKE	MICHAEL	LESLIE
STALEY JR	ROBERT	TRENARY
STAPLETON	MARY	MARGARET
STARR-LASSEN	MARTINA	
STAUFFER	THOMAS	PETER
STCHERBATCHEFF	BARBARA	LYNN
STEEVES	SUZANNE	MARIE
STEIGER	ROBERTA	ANN

Last name	First name	Middle name/initials
STEINMANN	DAVID	
STEPHENS	JANINE	ELIZABETH
STEPHENSON	MELANIE	C
STEPPENS	BRIAN	ROY
STEUER	GEORGE	CASPER
STEWART	PENELOPE	JOAN
STILLHART	MARTIN	KARL
STILLWAGON	BRADLEY	DON
STILLWAGON	GREGORY	
STINGELIN	LUKAS	
STOCKLI	CHEN	
STOLZE	MAGDALENA	
STONE	SAMANTHA	GAYE
STOTHERS	LUCILLE	FLORENCE
STRAUSS	JOHN	L
STREMSDOERFER	MATHIEU	GUY
STRINGER	LAURIE	JEAN
STRINHOLM	SHARON	LOUISE
STRYCK	SUSAN	RAE VETRANO
STUCKI	IRIS	GABRIELA
STUMBAUM	CHRISTINE	RITA
STURGEON	ERIC	ALEXANDER
SUH	NARI	HEESEUNG
SULLIVAN	JOHN	ROGER
SULLIVAN	KATHLEEN	MARY
SUTAPAK	SRITALA	
SUTER	BARBARA	ANN
SWANSON	MARY	MADONNA
TAM	WINSON	
TAN	JASMINE	
TANAKA	TERUMI	
TANDY	EDWIN	DANIEL
TANG	CHIA	HWAY
TANG	ZHENGYU	
TANNER	HANS-RUDOLF	GUSTAV
TAY	CHARMAINE	WAN CHIN
TAYLOR	GABRIELLE	BETH
TAYLOR	MAURICE	FATIO
TAYLOR	SANDRA	
TAYLOR	SARAH	RAFN
TAYLOR	WENTWORTH	HARRY
TEWORDT	MATTHIAS	LUDWIG
THAISS	LAILA	MARIA
THELEN	ALFRED	STEPHAN
THEODORACOPULOS	MANDOLYNA	CARLA
THEUER	MARGIT	
THOBANI	SHAHBIR	UMED
THOM	LINDA	LOU
THOMAS	ANNETTE	CHRISTINA
THOMASSEN	JOHANNA	S
THOMASSEN	JULIUS	C
THOMPSON	ADAM	LOCKWOOD
THOMPSON	MARTHA	JOAN
THOMPSON	STEPHEN	DOUGLAS
THORNER-MENGEDOHT	CATHERINE	JANE
THUNOT	ANDRE	FRANCOIS
THURAU	GERT	
TODTMAN	DAVID	ALLEN
TODTMAN	KATHEE	LYNN
TOMASSI	PAUL	
TOMITZEK	CHRISTIN	NICOLE
TOMOHARA	AKINORI	
TONG	FRANCIS	HO YUEN
TRACHSEL	JOHN	
TRAVNIKOVA	ANASTASIA	A
TREMBLAY	COLETTE	
TREMBLAY	GENEVIEVE	
TRIVEDI	ANIKET	BHAIRAV
TRUSSELL	REBECCA	ANN
TSAI	DAVID	CHING-RONG
TSAI	EUGENIA	JADE
TSAI	FUNG	HSIANG DENNIS
TSAI	NELSON	
TSAI	SU-MEI	

Last name	First name	Middle name/initials
TSANG	KWOK	KEUNG
TSOI	SAU	YEE
TURNER	BRUCE	EDWARD
TYURINA	MARIA	
UDRY	JEANNE	MATHILDE
UNSWORTH	PATRICIA	ANN
VACIK	THOMAS	DENNIS
VALLEJO	IVONNE	M
VALORI	ALBERTO	MAURIZIO
VAN DER BERG	NIENKE	ELISABETH
VAN DER PLANCKE	NATHALIE	PIERRE FRANCINE
VAN MONTFORT-KREUZER	MICHAELA	MARIA
VAN OS	RENEE	CATHARINA
VAN WYHE	JOHN	MICHAEL
VAROTTI	MARCUS	VINICIUS
VAYNSHELBOYM	SVETLANA	VLADIMIROVNA
VELOSO	FRANCISCO	
VENKATESH	SMITHA	
VERCRUYSSE	SYLVIE	MARIE-NOELLE
VERGNAUD	SEBASTIAN	ANTOINE
VERKAIK	ROGIER	
VESPA	MARIO	OP
VIANELLO	JODY	JOAN
VILLAT	JESSICA	WENDY
VINK	DENNIS	JAMES
VOGELBACH	SEBASTIAN	NICOLAS MAXIMILIAN
VOGT	CHIN	KIM
VOLLENWEIDER	WALTER	
VON ARX	SEVERIN	TERENCE
VON HOLTEN	MARIO	JOHN
VON WIETERSHEIM-KRAMSTA	KARIN	INES BARBARA
WACKERNAGEL	JACOB	LAURENZ
WADDINGTON	JENNIFER	ANN
WAGG	JONATHON	
WAGNER-VOELLMIN	SUSAN	DOREEN
WAINWRIGHT	MAUREEN	ANNE
WALCH	KATHARINA	MARIA FRANZISCA
WALKER	DEREK	JAMES
WALKER	PATRICIA	LYN
WALSH	JILLIAN	FALKENBERG ANNE
WALSH	REGHAN	FALKENBERG ALISON
WALTER	JOHN	HENRY
WALTER	WILLIAM	STUART
WALTHER	PAUL	ROBERT EARL
WAMPLER	AUDREY	CAROLINE
WANEY	MEHER	SAMARA
WANG	AI	LU
WANG	ANDY	JEN-WEN
WANG	CAROL	HSIAO PIN
WANG	CHIH	CHUNG
WANG	CRYSTAL	
WANG	MEI-YUE	
WANG	PEI	CHUN
WANG	PO	SHEN
WANG	YIN	TING
WANNER	RICHARD	ANTHONY
WASHINGTON	HELENE	MOLTZ
WASSINK	JANELLE	AILEEN
WASZYK	PATRICIA	
WATKINS	RICHARD	AMMON
WEBER	BARBARA	JEAN
WEDEMEYER	CHRISTINE	CAROL
WEI	WEI	
WEIKART	DAVID	RICHARD
WEIKART	JANE	MEINHARDT
WEINBERG	ELIZABETH	KELLY
WELT	DIANA	LYNN
WELTI	BRIGIT	GILBERTE
WERDER	JENNIFER	DIANE
WERY	MARLENE	BARBARA
WHEATLEY	SAMUEL	ERIC
WHELAN	THERESIA	AGNES
WHITESIDE	MEREDITH	JOHN
WHITING	CHRISTOPHER	MORRIS

Last name	First name	Middle name/initials
WICK	LESLIE	ANN
WICKINGSTAD	DAVID	NORMAN
WIEMER	JEWELL	RAE
WIGHT	ROBERTA	JEAN
WIGLEY	GEORGINA	MARGARET
WILCKE	IAN	PAUL
WILLIAMS	ELLEN	CHARLOTTE
WILLIAMS	LORRIS	HARRY
WILLIAMS	MARY	KATHERINE
WILLIAMS	RANDALL	LEE
WILLIAMS	ROBERT	DAVID
WILLIAMSON	CAROL	LYNN FAUST
WILLSON	NANCY	GAIL
WILLSON	NANCY	GAIL
WILSON	FRANK	BRADFORD
WINKLER	LYNETTE	CLAUDIA
WINTERMANN	KLAUS	GERHARD
WINTERS	STEPHEN	KENNETH
WISEMAN	JUDITH	ELAINE
WITMER	DIRK	KARL EARL
WOHLGEMUTH	JENNIFER	SUE
WONG	AMY	HONG
WONG	CELINE	H
WONG	KA	CHUN
WONG	KIN	YIN
WONG	KWOK	YING
WONG	TJING-HWA	
WOOD	JOSHUA	DANIEL
WOOD	JUSTIN	PHILLIP
WOOD	MARGARET	A
WOODWARD	GUY	FREDERICK
WORNE	MICHAEL	JOHN
WRIGHT	DAVID	C
WROUGHTON	JOHN	RICHARD
WU	CHAD	C
WU	ERIC	CHIEH-CHUNG
WU	HSIEN	HSIEN
WU	JEFF	CHIEH WEN
WYFFELS	ERIC	PAUL
XIAO	YONG	
XU	BIN	
YAMAGUCHI	HIROKO	
YANG	HELLEN	KUEI MEI
YASUDA	NAOMI	
YASUDA	NAOMICHI	
YASUHARA	NORIKO	
YEH	AI-YUN	
YEH	CHEN-SHIN	
YEH	HSIEN-LIANG	
YEO	ALOYSIUS	KEE HUAT
YEUNG	ABEL	
YEUNG	ANDREW	
YIM	CHI	KIN
YOKOHATA	SHINTARO	
YOO	ANDREW	
YOUNG	JOANN	CHU
YOUNG	RALPH	FREDERICK
YU	ADAM	CHIA HSIANG
YU	CHI	CHEN
YU	DAVID	TSU
YU	MEI	HUA
YU	ROBERT	W
YUCESAN	ENVER	
ZASLONA	SIMON	JONATHON
ZEEGERS	ISABELLE	NICOLE ALEXANDRINE
ZELLER-GRIEDER	EVELYN	JUDITH
ZHANG	NING	
ZIMMERMANN	SANDRA	GIOVANNA
ZINGG	EDWARD	THOMAS
ZONDLER	ELLEN	
ZUBAIDA	BRIGHTY	SHASHOU
ZWICKY	ALFRED	
ZWICKY	CAROLINE	SONIA
ZWICKY	MYRIAM	LUCY

Last name	First name	Middle name/initials
ZYLAN	GARY	ALLEN

Dated: April 28, 2015.

Frances Fay,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 10, 2015.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Wednesday, June 10, 2015, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Otis Simpson at 1–888–912–1227 or 202–317–3332, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11230 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 24, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, June 24, 2015, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Lisa Billups at 1–888–912–1227 or 214–413–6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11218 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 4, 2015.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Thursday, June 4, 2015, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various special topics with IRS processes.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11228 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 11, 2015.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, June 11, 2015, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11227 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 17, 2015.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, June 17, 2015 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: May 5, 2015.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2015–11244 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice and request for comments.

The Department of the Treasury will submit the following information collection request 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 June 8, 2015 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.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

OMB Number: 1545–1610.

Type of Review: Revision of a currently approved collection.

Title: Annual Return/Report of Employee Benefit Plan.

Form: 5500 and schedules; 5500–SF, 5500–SUP.

Abstract: Form 5500 is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited. Form 5500–SUP is a paper-only form filed with the IRS that is used by the sponsors and administrators of retirement plans to satisfy the reporting requirements of section 6058. Form 5500–SUP should only be used if certain IRS compliance questions are not answered electronically on the Form 5500 or Form 5500–SF.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 347,140.

Dated: May 5, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–11115 Filed 5–7–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection (Claim for Disability Insurance Benefits, Government Life Insurance) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 8, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Revision of a currently approved collection.

Abstract: Policyholder's complete VA Form 29–357 to file a claim for disability insurance on National Service Life Insurance and United States Government Life Insurance policies. The information collected is used to determine the policyholder's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 79 FR 75863 on December 19, 2014.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–11127 Filed 5–7–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection (Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 8, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0132'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0132'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA Form 26–4555 to apply for assistance in acquiring specially adapted housing or the special home adaptation grant. VA will use the data collected to determine the veteran's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 76451 on December 22, 2014.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–11125 Filed 5–7–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection (Supplement to VA Forms 21P–534, 534a, & 534EZ) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 8, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0004'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue

NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0004.''

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21P–534, 21P–534a, and 21P–534EZ.

OMB Control Number: 2900–0004.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–534, 534a, and 534EZ is used to gather the necessary information to determine the eligibility of surviving spouses and children for dependency and indemnity compensation (DIC), death pension, accrued benefits, and death compensation. VA Form 21P–534a is an abbreviated application for DIC that is used only by surviving spouses and children of veterans who died while on active duty service. The VA Form 21P–534EZ is used for the Fully Developed Claims (FDC) program for pension claims; claimants applying for Parents DIC can use this form also.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 79 FR 57659 on September 25, 2014.

Affected Public: Individuals or households.

Estimate Information Collection Burden

a. Number of Respondents: 101,425:

VA Form 21P–534—25,000

VA Form 21P–534a—1,425

VA Form 21P–534EZ—75,000

b. Frequency of Response: one time.

c. Annual Burden is 62,856 hours:

VA Form 21P–534—31,250

VA Form 21P–534a—356

VA Form 21P–534EZ—31,250

d. Estimated completion times based on review by staff personnel:

VA Form 21P–534—75 minutes

VA Form 21P–534a—15 minutes

VA Form 21P–534EZ—25 minutes

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–11120 Filed 5–7–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0826]

Agency Information Collection (Intent To File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 8, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0826'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0826'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC (VA Form 21–0966).

OMB Control Number: 2900–0826.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0966 will be used by claimants and/or their authorized representatives to indicate intent to file a claim for compensation and/or disability benefits to establish an effective date for an award granted in association with a complete claim filed within 1 year of such form. VA will use this form to identify claimants in its internal business operational systems to record the date of receipt of this document for the purposes of establishing a date of claim for a complete claim that is filed within 1 year. VA also uses the information to furnish the claimant with the appropriate VA form or application for VA benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 7530 on February 10, 2015.

Affected Public: Individuals or Households.

Estimated Annual Burden: 181,140.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 724,561.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2015–11122 Filed 5–7–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (Post-Engagement) Activity: Comment Request

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), the Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: VA OSDBU is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed new collection of information and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to (1) determine the return on investment (ROI) provided by the National Veterans Small Business Engagement (NVSBE) to the Department of Veterans Affairs (VA), other Federal agencies, and small and large business attendees, (2) have a mechanism that allows to share ROI and satisfaction levels with potential

attendees in order to make informed decisions regarding their participation in future NVSBEs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 7, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Milagros Ortiz, OSDBU, (OOSB) or email to: *milagros.ortiz@va.gov.* Please refer to ''OMB Control No. 2900—NEW (Post-Engagement)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Milagros Ortiz at (202) 461–4279 or Fax (202) 461–4301.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OMB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OMB's functions, including whether the information will have practical utility; (2) the accuracy of OMB's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Post Engagement.

OMB Control Number: 2900—NEW.

Type of Review: New collection.

Abstract: The Office of Small and Disadvantaged Business Utilization (OSDBU) needs to measure the ROI the NVSBE provides to VA and its attendees. VA intends to gather data that will allow OSDBU to measure the efficiency of this event, to learn how to better serve its stakeholders needs and to share this information with potential attendees.

Affected Public: NVSBE attendees, to include federal employees, small business owners, commercial corporations, and prime contractors.

Estimated Annual Burden: 117 hours.

Estimated Average Burden per Respondent: 7 minutes.

Frequency of Response: Every year after the NVSBE.

Estimated Number of Respondents: 1,000 per year.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2015–11126 Filed 5–7–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration
49 CFR Parts 171, 172, 173, *et al.*
Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, and 179

[Docket No. PHMSA–2012–0082 (HM–251)]

RIN 2137–AE91

Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), is adopting requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as ''high-hazard flammable trains'' (HHFT) and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements. These operational and safety improvements are necessary to address the unique risks associated with the growing reliance on trains to transport large quantities of flammable liquids. They incorporate recommendations from the National Transportation Safety Board (NTSB) and from the public comments, and are supported by a robust economic impact analysis.

DATES: *Effective Date:* This final rule is effective July 7, 2015.

Incorporation by reference Date: The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 7, 2015.

ADDRESSES: You may find information on this rulemaking (Docket No. PHMSA–2012–0082) at Federal eRulmaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rob Benedict and Ben Supko, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration or Karl Alexy, (202) 493–6245, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

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I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), is issuing this final rule, titled ''Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for HHFTs,'' in order to increase the safety of flammable liquid shipments by rail. The final rule is necessary due to the expansion in United States (U.S.) energy production, which has led to significant challenges for the country's transportation system. PHMSA published a notice of proposed rulemaking (NPRM) on August 1, 2014. See 79 FR 45015. This final rule addresses comments to the NPRM and amends the existing hazardous materials regulations (HMR; 49 CFR parts 171–180) pertaining to tank car designs, speed restrictions, braking systems, routing, sampling and classification, and notification requirements related to certain trains transporting large quantities of flammable liquids.

Expansion in oil production has resulted in a large volume of crude oil being transported to refineries and other transport-related facilities, such as transloading facilities throughout the country. With a growing domestic supply, rail transportation has emerged as a flexible alternative to transportation by pipeline or vessel, which have historically delivered the vast majority of crude oil to U.S. refineries. The volume of crude oil carried by rail increased 423 percent between 2011 and 2012.[1] [2] In 2013, the number of rail carloads of crude oil surpassed 400,000.[3] [4] Further, based on information provided by the Association of American Railroads (AAR), the U.S. Energy Information Administration (U.S. EIA) asserts the amount of crude oil and refined petroleum products moved by U.S. railroads continued to increase by nine percent during the first seven months of 2014, when compared with the same period in 2013.

[1] See U.S. Rail Transportation of Crude Oil: Background and Issues for Congress; *http://fas.org/sgp/crs/misc/R43390.pdf*.

[2] See Table 9 of EIA refinery report *http://www.eia.gov/petroleum/refinerycapacity/*.

[3] *http://www.stb.dot.gov/stb/industry/econ_waybill.html*.

[4] *http://www.eia.gov/todayinenergy/detail.cfm?id=17751*.

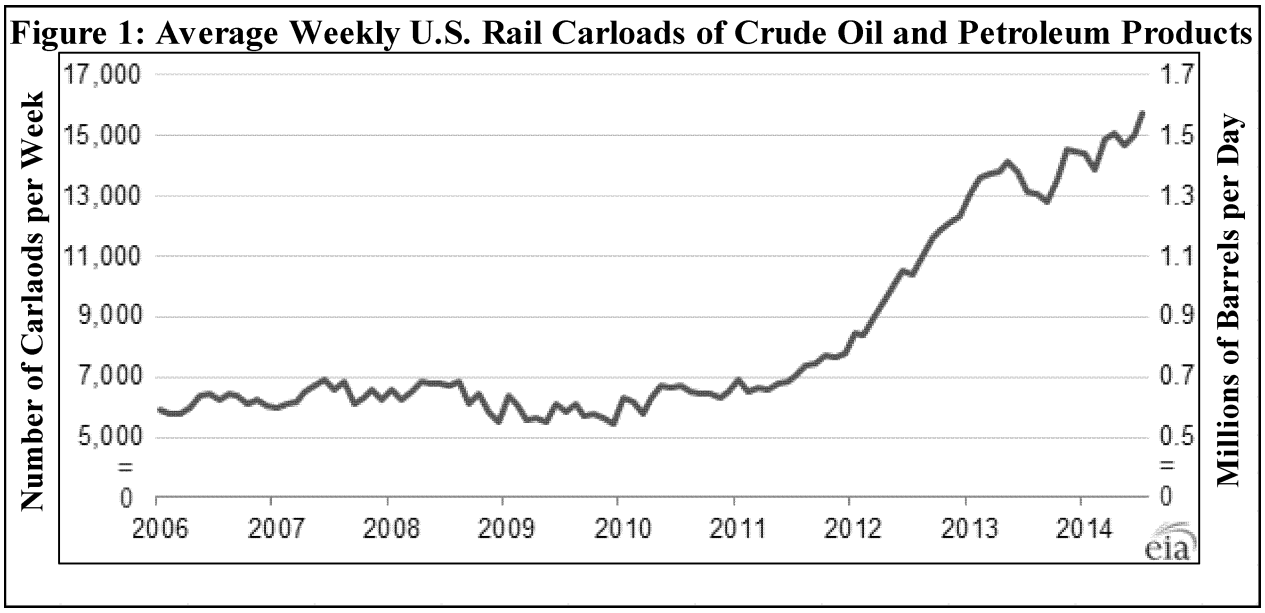


Figure 1 visually demonstrates the considerable increase in crude oil and petroleum shipments by rail.[5]

U.S. ethanol production has also increased considerably during the last 10 years and has generated similar growth in the transportation of ethanol by rail.[6] Ethanol constitutes 26 percent of the total number of rail hazardous materials shipments, and is 1.1 percent of all railroad shipments.[7]

Crude oil and ethanol comprise approximately 68 percent of the flammable liquids transported by rail. The inherent risk of flammability of these materials is compounded in the context of rail transportation because petroleum crude oil and ethanol are commonly shipped in large quantities, either as large blocks of material in a manifest train or as a single commodity train (commonly referred to as a ''unit train''). As detailed in the NPRM, in recent years, train accidents/incidents (train accidents) involving the release of a flammable liquid and resulting in fires and other severe consequences have occurred. See the Regulatory Impact Analysis, posted in the docket, for a detailed description of the accidents considered for this rulemaking.

Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary delegated this authority to PHMSA. 49 CFR 1.97(b). PHMSA is responsible for overseeing a hazardous materials safety program that minimizes the risks to life and property inherent in transportation in commerce. On a yearly basis the HMR provides safety and security requirements for more than 2.5 billion tons of hazardous materials (hazmat), valued at about $2.3 trillion, and hazmat was moved 307 billion miles on the nation's interconnected transportation network.[8] In addition, the HMR include operational requirements applicable to each mode of transportation. The Secretary also has authority over all areas of railroad transportation safety (Federal railroad safety laws, principally 49 U.S.C. chapters 201–213), and this authority is delegated to FRA. 49 CFR 1.89. FRA inspects and audits railroads, tank car facilities, and hazardous material offerors for compliance with both FRA and PHMSA regulations. FRA also has an extensive, well-established research and development program to enhance all elements of railroad safety, including hazardous materials transportation. As a result of the shared role in the safe and secure transportation of hazardous materials by rail, PHMSA and FRA work very closely when considering regulatory changes and the agencies take a system-wide, comprehensive approach consistent with the risks posed by the bulk transport of hazardous materials by rail.

This rulemaking is intended to reduce the likelihood of train accidents involving flammable liquids, and mitigate the consequences of such accidents should they occur. In this final rule, PHMSA is revising the HMR to establish requirements for any ''high-hazard flammable train'' (HHFT) that is transported over the U.S. rail network. Based on analysis of the risk of differing train compositions, this rule defines an HHFT as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train. For the purposes of advanced braking systems, this rule also defines a ''high-hazard flammable unit train'' (HHFUT) as a train comprised of 70 or more loaded tank cars containing Class 3 flammable liquids traveling speeds at greater than 30 mph. The rule ensures that the requirements are closely aligned with the risks posed by the operation of trains that are transporting large quantities of flammable liquids. As discussed further in this preamble and in the accompanying RIA, this rule primarily impacts trains transporting large quantities of ethanol and crude oil, because ethanol and crude oil are most frequently transported in high-volume shipments than when transported in a single train, and such trains would meet the definition of an HHFT. By revising the definition of HHFT from that which was proposed in the NPRM, we have clarified the scope of the final rule and focused on the highest-risk shipments, while not affecting lower-risk trains that

[5] *http://www.eia.gov/todayinenergy/detail.cfm?id=17751.*

[6] Association of American Railroads. 2013. Railroads and Ethanol. Available online at *https://www.aar.org/BackgroundPapers/Railroads%20and%20Ethanol.pdf.*

[7] *http://ethanolrfa.org/page/-/rfa-association-site/Industry%20Resources/RFA.Ethanol.Rail.Transportation.and.Safety.pdf?nocdn=1.*

[8] 2012 Commodity Flow Survey, Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS). See *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=CFS_2012_00H01&prodType=table.*

are not transporting similar bulk quantities of Class 3 flammable liquids.[9]

PHMSA and FRA have used a variety of regulatory and non-regulatory methods to address the risks of the bulk transport of flammable liquids, including crude oil and ethanol, by rail. These efforts include issuing guidance, conducting rulemakings, participating in rail safety committees, holding public meetings, enhancing enforcement efforts, and reaching out to the public. All of these efforts are consistent with our system-wide approach.

PHMSA and FRA focus on prevention, mitigation and response to manage and reduce the risk posed to people and the environment by the transportation of hazardous materials by rail. When addressing these issues, PHMSA and FRA focus on solutions designed to reduce the probability of accidents occurring and to minimize the consequences of an accident should one occur.

In this final rule, we are revising the HMR to establish requirements specific to HHFTs. As described in greater detail throughout this document, the final rule takes a system-wide, comprehensive approach consistent with the risks posed by HHFTs. Specifically, Table 1 describes the regulatory changes implemented in this final rule and identifies entities affected by this final rule.

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS

Adopted requirement	Affected entity
Enhanced Standards for Both New and Existing Tank Cars Used in HHFTs	Tank Car Manufacturers, Tank Car Owners, Shippers/Offerors and Rail Carriers.
• New tank cars constructed after October 1, 2015 are required to meet enhanced DOT Specification 117 design or performance criteria.	
• Existing tank cars must be retrofitted in accordance with the DOT-prescribed retrofit design or performance standard.	
• Retrofits must be completed based on a prescriptive retrofit schedule and a retrofit reporting requirement is triggered if initial milestone is not achieved.	
More Accurate Classification of Unrefined Petroleum-Based Products	Offerors/Shippers of unrefined petroleum-based products.
• Develop and carry out sampling and testing program for all unrefined petroleum-based products, such as crude oil, to address:	
(1) Frequency of sampling and testing that accounts for any appreciable variability of the material.	
(2) Sampling prior to the initial offering of the material for transportation and when changes that may affect the properties of the material occur;	
(3) Sampling methods that ensures a representative sample of the entire mixture, as offered, is collected;	
(4) Testing methods that enable classification of the material under the HMR;	
(5) Quality control measures for sample frequencies;	
(6) Duplicate samples or equivalent measures for quality assurance;	
(7) Criteria for modifying the sampling and testing program;	
(8) Testing or other appropriate methods used to identify properties of the mixture relevant to packaging requirements.	
• Certify that program is in place, document the testing and sampling program outcomes, and make information available to DOT personnel upon request.	
Rail routing—Risk assessment	Rail Carriers, Emergency Responders.
• Perform a routing analysis that considers, at a minimum, 27 safety and security factors and select a route based on its findings. These planning requirements are prescribed in 49 CFR § 172.820.	
Rail routing—Notification.	
• Ensures that railroads notify State and/or regional fusion centers and State, local, and tribal officials who contact a railroad to discuss routing decisions are provided appropriate contact information for the railroad in order to request information related to the routing of hazardous materials through their jurisdictions. This replaces the proposed requirements to notify State Emergency Response Commissions (SERCs) or other appropriate state delegated entity about the operation of these trains through their States.	
Reduced Operating Speeds	Rail Carriers.
• Restrict all HHFTs to 50-mph in all areas.	
• Require HHFTs that contain any tank cars not meeting the enhanced tank car standards required by this rule operate at a 40-mph speed restriction in high-threat urban areas[10].	
Enhanced Braking	Rail Carriers.
• Require HHFTs to have in place a functioning two-way end-of-train (EOT) device or a distributed power (DP) braking system.	
• Require trains meeting the definition of a ''high-hazard flammable unit train'' (HHFUT)[11] be operated with an electronically controlled pneumatic (ECP) braking system by January 1, 2021, when transporting one or more tank cars loaded with a Packing Group I flammable liquid.	

[9] In the August 1, 2014, NPRM, an HHFT was defined as a train comprised of 20 or more carloads of a Class 3 flammable liquid. This rule defines an HHFT as a train comprised of 20 or more tank car loads of a Class 3 flammable liquid in a continuous block or 35 tank car loads of a Class 3 flammable liquid across the entire train.

[10] As defined the Transportation Security Administration's regulations at 49 CFR 1580.3—High Threat Urban Area (HTUA) means an area comprising one or more cities and surrounding areas including a 10-mile buffer zone, as listed in appendix A to 49 CFR Part 1580. The 50-mph maximum speed restriction for HHFTs is consistent with the speed restrictions that the AAR issued in Circular No. OT–55–N on August 5, 2013. The 40-mph builds on an industry imposed voluntary restriction that applies to any ''Key Crude Oil Train'' with at least one non-CPC 1232 tank car or one non-DOT specification tank car while that train travels within the limits of any high-threat urban area (HTUA) as defined by 49 CFR 1580.3.

[11] A ''high-hazard flammable unit train'' (HHFUT) means a train comprised of 70 or more loaded tank cars containing Class 3 flammable liquids traveling at greater than 30 mph.

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS—Continued

Adopted requirement	Affected entity
• Require trains meeting the definition of a HHFUT be operated with an ECP braking system by May 1, 2023, when transporting one or more tank cars loaded with a Packing Group II or III flammable liquid.	

PHMSA and FRA received over 3,200 public comments representing over 182,000 signatories in response to the NPRM and initial RIA. We carefully considered each comment and revised, as appropriate, the final rulemaking to reflect those comments. Table 2 below provides a high-level overview of what was originally proposed in the NPRM versus the amendments being adopted in this final rule.

TABLE 2—NPRM VS. FINAL RULE COMPARISON

Topic	NPRM proposal	Final rule amendment	Justification
Scope—High-Hazard Flammable Train.	High-hazard flammable train means a single train carrying 20 or more carloads of a Class 3 flammable liquid.	A continuous block of 20 or more tank cars loaded with a flammable liquid or 35 or more tank cars loaded with a flammable liquid dispersed through a train.	PHMSA and FRA modified the proposed definition to capture the higher-risk bulk quantities transported in unit trains, while excluding lower-risk manifest trains. This revision better captures the intended trains.
Tank Car—New Construction	Three options for new tank car standards (See table 13).	A modified version of Tank Car Option #2 from the NPRM.	These design enhancements will reduce the consequences of accidents involving an HHFT. These enhancements will improve puncture resistance and thermal survivability when exposed to fire. There will be fewer car punctures, fewer releases from the service equipment (top and bottom fittings). See RIA.
Tank Car—Existing Fleet	Consistent with proposed new tank car standards, the same three options for retrofitted tank car standards. It was proposed that both new and retrofitted cars would meet the same standard.	Tank Car Option #3 from the NPRM for retrofits.	Provides incremental safety benefit over the current fleet while minimizing cost. These design enhancements will reduce the consequences of a derailment of an HHFT. There will be fewer car punctures, and fewer releases from the service equipment (top and bottom fittings). See RIA.
Tank Car—Retrofit Timeline	A five-year retrofit schedule based solely on packing group.	A risk-based ten-year retrofit schedule based on packing group and tank car. A retrofit reporting requirement is triggered if initial milestone is not achieved.	Provides for greater risk reduction by focusing on the highest risk tank car designs and commodities first. Accounts for industry retrofit capacity.
Speed Restrictions	A 50 mph restriction across the board for HHFTs and three options for a 40 mph restriction in specific areas.	A 50 mph restriction across the board for HHFTs and a 40 mph restriction in HTUA.	Decreases the kinetic energy involved in accidents. Adopts the most cost-effective solution and limits the impact of rail congestion.
Braking	The scaling up of braking systems culminating in ECP braking for HHFTs or a speed limitation for those not meeting the braking requirements.	(1) Requires HHFTs to have in place a functioning two-way EOT device or a DP braking system. (2) Requires any HHFUT transporting at least one PG I flammable liquid be operated with an ECP braking system by January 1, 2021. (3) Requires all other HHFUTs be operated with an ECP braking system by May 1, 2023.	Provides a two-tiered, cost-effective and risk-based solution to reduce the number of cars and energy associated with train accidents. Focuses on the highest-risk train sets

TABLE 2—NPRM VS. FINAL RULE COMPARISON—Continued

Topic	NPRM proposal	Final rule amendment	Justification
Classification	A classification plan for mined liquids and gases.	A classification plan for unrefined petroleum products. Clarified the materials subject to a plan.	Addresses comments seeking clarity of requirements. We expect the requirements would reduce the expected damages and ensure that materials are properly classified in accordance with the HMR.
Routing	Require railroads operating HHFTs to conduct a routing analysis considering, at a minimum, 27 factors.	Require railroads operating HHFTs to conduct a routing analysis considering, at a minimum, 27 factors.	Track type, class, and maintenance schedule as well as training and skill level of crews are included in the 27 risk factors identified that need to be considered, at a minimum, in a route analysis. Evaluation of these factors could result in prevention of an accident due to either rail defects or human factors/errors.
Notification	Require trains carrying 1,000,000 gallons or more of Bakken Crude oil to notify SERCs.	Use the notification portion of the routing requirements (i.e. notification to state/regional fusion centers) to satisfy need for pertinent information.	Addresses concerns over security sensitive and confidential business information. Addresses the need for action in the form of additional communication between railroads and emergency responders to ensure that the emergency responders are aware of the appropriate contacts at railroads to discuss routing issues with.

With regard to the construction of new tank cars and retrofitting of existing tank cars for use in HHFTs, PHMSA and FRA are requiring new tank cars constructed after October 1, 2015 to meet the new design or performance standard, if those tank cars are used as part of an HHFT.[12] In addition, PHMSA and FRA have revised our retrofit timeline. In the NPRM, the retrofit timeline was based on a single risk factor, the packing group. In the final rule, the retrofit timeline is revised to focus on two risk factors, the packing group and differing types of DOT–111 and CPC–1232 tank car. This revision is based on comments to the NPRM and the development of a model to demonstrate industry capacity and learning rates. The revised timeline provides an accelerated risk reduction that more appropriately addresses the overall risk. PHMSA and FRA also modified the overall length of the retrofit to account for issues raised by commenters that were not considered in the NPRM stage. In this final rule, PHMSA is adopting a risk-based timeline for the retrofit of existing tank cars to meet an enhanced CPC–1232 standard (Option #3) when used as part of an HHFT. The timeline is provided in the following table:

TABLE 3—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 (DOT–111) TANKS FOR USE IN HHFTS

Tank car type/service	Retrofit deadline
Non Jacketed DOT–111 tank cars in PG I service	(January 1, 2017 *).
	January 1, 2018.
Jacketed DOT–111 tank cars in PG I service	March 1, 2018.
Non-Jacketed CPC–1232 tank cars in PG I service	April 1, 2020.
Non Jacketed DOT–111 tank cars in PG II service	May 1, 2023.
Jacketed DOT–111 tank cars in PG II service	May 1, 2023.
Non-Jacketed CPC–1232 tank cars in PG II service	July 1, 2023.
Jacketed CPC–1232 tank cars in PG I and PG II service** and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025.

* The January 1, 2017 date would trigger a retrofit reporting requirement, and tank car owners of affected cars would have to report to DOT the number of tank cars that they own that have been retrofitted, and the number that have not yet been retrofitted.

** We anticipate these will be spread out throughout the 120 months and the retrofits will take place during normal requalification and maintenance schedule, which will likely result in fleet being retrofit sooner.

This final rule takes a system-wide, comprehensive approach to rail safety commensurate with the risks associated with HHFTs. Specifically, the requirements in this final rule address:

- Tank Car Specifications
- Advanced Brake Signal Propagation Systems
- Speed Restrictions
- Routing Requirements

[12] Other authorized tank specification as specified in part 173, subpart F will also be permitted however, manufacture of a DOT specification 111 tank car for use in an HHFT is prohibited.

- Notification Requirements
- Classification of unrefined petroleum-based products

In this final rule, the proposals in the NPRM have been revised in response to the comments received and the final RIA has been revised to align with the changes made to the final rule. Specifically, the RIA explains adjustments to the methodology used to estimate the benefits and costs resulting from the final rule.

The revised RIA is in the docket and supports the amendments made in this final rule. Table 4 shows the costs and benefits by affected section and rule provision over a 20-year period, discounted at a 7% rate. Table 4 also shows an explanation of the comprehensive benefits and costs (*i.e.,* the combined effects of individual provisions), and the estimated benefits, costs, and net benefits of each amendment.

Please also note that, given the uncertainty associated with the risks of HHFT shipments, Table 4 contains a range of benefits estimates. The low-end of the range of estimated benefits estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol from 2006 to 2013, adjusting for the projected increase in shipment volume over the next 20 years. The upper end of the range of estimated benefits is the 95th percentile of a Monte Carlo simulation.

TABLE 4—20 YEAR COSTS AND BENEFITS BY STAND-ALONE REGULATORY AMENDMENTS 2015–2034 [13]

Affected section [14]	Provision	Benefits (7%)	Costs (7%)
49 CFR § 172.820	Rail Routing +	Cost effective if routing were to reduce risk of an incident by 0.41%.	$8.8 million.
49 CFR § 173.41	Classification Plan	Cost effective if this requirement reduces risk by 1.29%.	$18.9 million.
49 CFR § 174.310	Speed Restriction: 40 mph speed limit in HTUA *.	$56 million–$242 million **	$180 million.
	Advanced Brake Signal Propagation Systems.	$470.3 million–$1,114 million **	$492 million.
49 CFR part 179	Existing Tank Car Retrofit/Retirement	$426 million–$1,706 million **	$1,747 million.
	New Car Construction	$23.9 million–$97.4 million **	$34.8 million.
Cumulative Total		$912 million–$2,905 million **	$2,482 million.

"*" indicates voluntary compliance regarding crude oil trains in high-threat urban areas (HTUA)
"+" indicates voluntary actions that will be taken by shippers and railroads
"**" Indicates that the low end of the benefits range is based solely on lower consequence events, while the high end of the range includes benefits from mitigating high consequence events.

II. Background and Approach to Rail Safety

As noted above the HMR provide safety and security requirements for shipments valued at more than $2.3 trillion annually.[15] The HMR are designed to achieve three goals: (1) To ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) to provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) to minimize the consequences of an incident should one occur. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard, thus reducing the probability and quantity of a hazardous material release.

Under the HMR, hazardous materials are categorized by analysis and experience into hazard classes and, for some classes, packing groups based upon the risks that they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials based on such classification, and require an offeror to communicate the material's hazards through the use of shipping papers, package marking and labeling, and vehicle placarding. The HMR also require offerors to provide emergency response information applicable to the specific hazard or hazards of the material being transported. Further, the HMR (1) mandate training for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce, and (2) require the development and implementation of plans to address the safety and security risks related to the transportation of certain types and quantities of hazardous materials in commerce.

The HMR also include operational requirements applicable to each mode of transportation and the FRA inspects and audits railroads, tank car facilities, and offerors of hazardous materials for compliance with PHMSA regulations as well as its own rail safety regulations. Additionally FRA's research and development program seeks to enhance all elements of railroad safety, including hazardous materials transportation.

To address our shared concerns regarding the risks associated with rail carriage of flammable liquids, and the large volumes of flammable liquids transported in HHFTs, PHMSA and FRA are focusing on three areas: (1) Proper classification and characterization; (2) operational controls to lessen the likelihood and consequences of accidents; and (3) improvements to tank car integrity. This approach is designed to minimize the occurrence of train accidents and mitigate the damage caused should an accident occur.

This overview section provides a general discussion of the major regulations currently in place that affect the safe transportation of hazardous materials by rail. These regulations pertain to issues such as: (1) Braking; (2) speed restrictions; (3) routing; (4) notification requirements; (5) oil spill response planning; (6) classification; and (7) packaging requirements.

A. Braking

The effective use of braking on a freight train can result in accident avoidance. In addition, the effective use of braking on a freight train can potentially lessen the consequences of an accident by diminishing in-train forces, which can reduce the likelihood of a tank car being punctured and

[13] All costs and benefits are in millions over 20 years, and are discounted to present value using a seven percent rate and rounded.

[14] All affected sections of the Code of Federal Regulations (CFR) are in Title 49.

[15] 2012 Commodity Flow Survey, RITA, BTS. See *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=CFS_2012_00H01&prodType=table.*

decrease the likelihood of a derailment. The FRA has promulgated brake system safety standards for freight and other non-passenger trains and equipment in 49 CFR part 232. Specifically, part 232 provides requirements for (1) general braking, (2) inspection and testing, (3) periodic maintenance and testing, (4) end-of-train (EOT) devices, (5) introduction of new brake system technologies and (6) electronically controlled pneumatic braking (ECP) systems.

FRA's brake system safety standards incorporate longstanding inspection and maintenance requirements related to a train's braking systems—air brakes and handbrakes—that have been in existence for well over 100 years. However, FRA's brake system safety standards also anticipate and allow for new technology. See 49 CFR part 232, subpart F. In 1996, FRA published regulations establishing requirements pertaining to the use and design of two-way EOT devices. 62 FR 278 (Jan. 2, 1997). In 2008, FRA published subpart E to part 232, which established design, inspection, maintenance, and training standards for railroads implementing ECP brake system technology. 73 FR 61512 (Oct. 16, 2008). Two-way EOT devices and ECP braking systems have the potential to provide enhanced braking during emergency braking and ECP brakes allow for enhanced braking and better train control during normal operational brake applications. Moreover, in recent years, certain railroads, particularly those in the western half of the U.S., have shifted to using distributed power (DP), to move longer trains. While DP is technically not a braking system, it can provide some enhanced braking during an emergency braking application over conventional braking systems because it provides an additional signal source to speed the application of air brakes.

Three types of braking systems relevant to this rulemaking, two-way end-of-train (EOT) devices, distributed power (DP) systems, and electronically controlled pneumatic (ECP) braking systems, and briefly introduced below. They are discussed in greater detail in the ''Advanced Braking Signal Systems'' section of this rulemaking.

Two-way EOT devices include two pieces of equipment linked by radio that initiate an emergency brake application command from the front unit located in the controlling (''lead'') locomotive, which then activates the emergency air valve at the rear of the train within one second. The rear unit of the device sends an acknowledgment message to the front unit immediately upon receipt of an emergency brake application command. A two-way EOT device is slightly more effective than conventional air brakes because the rear cars receive the emergency brake command more quickly in an engineer induced emergency brake application.

DP systems use multiple locomotives positioned at strategic locations within the train consist (often at the rear of the train) to provide additional power and train control in certain operations. For instance, a DP system may be used to provide power while climbing a steep incline and to control the movement of the train as it crests the incline and begins its downward descent. The DP system works through the control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives. While distributed power technically is not a braking system, the additional power source in or at the rear of the train consist do provide enhanced braking for a train. The addition of a DP locomotive allows for the braking effort to be distributed throughout the train and allows for a more uniform braking effort than with a conventional air brake system.

ECP brake systems simultaneously send an electronic braking command to all equipped cars in the train, reducing the time before a car's pneumatic brakes are engaged compared to conventional air brakes. They can be installed as an overlay to a conventional air brake system or replace it altogether; however, FRA regulations do require that ECP brake systems be interoperable pursuant to the AAR S–4200 standard, which allows for interchange among the Class I railroads. 49 CFR 232.603.

The simultaneous application of ECP brakes on all cars in a train also significantly improves train handling by substantially reducing stopping distances as well as buff and draft forces within the train, which under certain conditions can result in a derailment. Because ECP brakes do not rely on changes in air pressure passing from car to car, there are no delays related to the depletion and recharging of a train's air brake system. These factors provide railroads with the ability to decrease congestion or to increase volume by running longer trains closer together.

B. Speed Restrictions

High speeds can increase the kinetic energy involved in and the associated damage caused by an accident. With respect to operating speeds, FRA has developed a system of classification that defines different track classes based on track quality. The track classes include Class 1 through Class 9 and ''excepted track.'' See 49 CFR 213.9 and 213.307. Freight trains transporting hazardous materials currently operate at track speeds associated with Class 1 through Class 5 track and, in certain limited instances, at or below ''excepted track'' speed limits. Section 213.9 of the FRA regulations on Track Safety Standards provides the ''maximum allowable operating speed'' for track Class 1 through Class 5 and ''excepted track.'' The speed limits range from 10 mph or less up to 80 mph; however, AAR design specifications effectively limit most freight equipment to a maximum allowable speed of 70 mph.

In addition, the rail industry, through the AAR, implements a detailed protocol on recommended operating practices for the transportation of hazardous materials. This protocol, set forth in AAR Circular OT–55–N includes a 50-mph maximum speed for any ''key train,'' including any train with 20 car loads of ''any combination of hazardous material.'' In February 2014, by way of Secretary Foxx's *Letter to the Association of American Railroads,* AAR's Railroad Subscribers further committed to a 40-mph speed limit for certain trains carrying crude oil within the limits of any High-Threat Urban Area (HTUA), as defined by TSA regulations (49 CFR 1580.3).

C. Track Integrity, Securement, Engineer and Conductor Certification, Crew Size and the Safety of Freight Railroad Operations

FRA carries out a comprehensive railroad safety program pursuant to its statutory authority. FRA's regulations promulgated for the safety of railroad operations involving the movement of freight address: (1) Railroad track; (2) signal and train control systems; (3) operating practices; (4) railroad communications; (5) rolling stock; (6) rear-end marking devices; (7) safety glazing; (8) railroad accident/incident reporting; (9) locational requirements for the dispatch of U.S. rail operations; (10) safety integration plans governing railroad consolidations, mergers, and acquisitions of control; (11) alcohol and drug testing; (12) locomotive engineer and conductor certification; (13) workplace safety; (14) highway-rail grade crossing safety; and other subjects.

Train accidents are often the culmination of a sequence of events that are influenced by a variety of factors and conditions. Broken rails or welds, track geometry, and human factors such as improper use of switches are leading causes of derailments. Rail defects have caused major accidents involving HHFTs, including accidents in New

Brighton, PA, Arcadia, OH and Lynchburg, VA.

While this final rule does not directly address regulations governing the inspection and maintenance of track, securement, and human factors, it does indirectly address some of these issues through the consideration of the 27 safety and security factors as part of the routing requirements. For a summary of on-going FRA related action, including track integrity, securement, crew size, and positive train control, please see the ''Recent Regulatory Actions Addressing HHFTs'' portion of this rulemaking.

D. Routing

Careful consideration of a rail route with regard to a variety of risk factors can mitigate risk of an accident. For some time, there has been considerable public and Congressional interest in the safe and secure rail routing of security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). The Implementing Recommendations of the 9/11 Commission Act of 2007 directed the Secretary, in consultation with the Secretary of Homeland Security, to publish a rule governing the rail routing of security-sensitive hazardous materials. On December 21, 2006, PHMSA, in coordination with FRA and the Transportation Security Administration (TSA) of the U.S. Department of Homeland Security (DHS), published an NPRM proposing to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. 71 FR 76834.

In that NPRM, we proposed that the route analysis requirements would apply to certain hazardous materials that PHMSA, FRA and TSA believed presented the greatest transportation safety and security risks. Those hazardous materials included certain shipments of explosives, materials poisonous by inhalation (PIH materials), and highway-route controlled quantities of radioactive materials. We solicited comment on whether the proposed requirements should also apply to flammable gases, flammable liquids, or other materials that could be weaponized, as well as hazardous materials that could cause serious environmental damage if released into rivers or lakes. Commenters who addressed this issue indicated that rail shipments of Division 1.1, 1.2, and 1.3 explosives; Poison Inhalation Hazard (PIH) materials; and highway-route controlled quantities of radioactive materials pose significant rail safety and security risks warranting the enhanced security measures proposed in the NPRM and adopted in a November 26, 2008, final rule. 73 FR 20752. Commenters generally did not support enhanced security measures for a broader list of materials than were proposed in the NPRM.

The City of Las Vegas, Nevada, did support expanding the list of materials for which enhanced security measures are required, to include flammable liquids, flammable gases, certain oxidizers, certain organic peroxides, and 5,000 pounds or greater of pyrophoric materials. While DOT and DHS agreed that these materials pose certain safety and security risks in rail transportation, the risks were not as great as those posed by the explosive, PIH, and radioactive materials specified in the NPRM, and PHMSA was not persuaded that they warranted the additional safety and security measures. PHMSA did note, however, that DOT, in consultation with DHS, would continue to evaluate the transportation safety and security risks posed by all types of hazardous materials and the effectiveness of existing regulations in addressing those risks and would consider revising specific requirements as necessary.

In 2008 PHMSA, in consultation with FRA, issued the final route analysis rule. 73 FR 72182. That rule, now found at 49 CFR 172.820, requires rail carriers to select a practicable route posing the least overall safety and security risk to transport security-sensitive hazardous materials. The route analysis final rule requires rail carriers to compile annual data on certain shipments of explosive, PIH, and radioactive materials; use the data to analyze safety and security risks along rail routes where those materials are transported; assess alternative routing options; and make routing decisions based on those assessments. In accordance with § 172.820(e), the carrier must select the route posing the least overall safety and security risk. The carrier must retain in writing all route review and selection decision documentation. Additionally, the rail carrier must identify a point of contact on routing issues involving the movement of covered materials and provide that contact information to the appropriate State, local, and tribal personnel.

Rail carriers must assess available routes using, at a minimum, the 27 factors listed in appendix D to part 172 of the HMR to determine the safest, most secure routes for the transportation of covered hazardous materials.

TABLE 5—MINIMUM FACTORS TO BE CONSIDERED IN THE PERFORMANCE OF THE SAFETY AND SECURITY RISK ANALYSIS REQUIRED BY 49 CFR § 172.820

Volume of hazardous material transported	Rail traffic density	Trip length for route.
Presence and characteristics of railroad facilities	Track type, class, and maintenance schedule.	Track grade and curvature.
Presence or absence of signals and train control systems along the route (''dark'' versus signaled territory).	Presence or absence of wayside hazard detectors.	Number and types of grade crossings.
Single versus double track territory	Frequency and location of track turnouts.	Proximity to iconic targets.
Environmentally sensitive or significant areas	Population density along the route	Venues along the route (stations, events, places of congregation).
Emergency response capability along the route	Areas of high consequence along the route, including high-consequence targets.	Presence of passenger traffic along route (shared track).
Speed of train operations	Proximity to en-route storage or repair facilities.	Known threats, including any threat scenarios provided by the DHS or the DOT for carrier use in the development of the route assessment.
Measures in place to address apparent safety and security risks	Availability of practicable alternative routes.	Past accidents.
Overall times in transit	Training and skill level of crews	Impact on rail network traffic and congestion.

The HMR require carriers to make conscientious efforts to develop logical and defendable systems using these factors.

FRA enforces the routing requirements of § 172.820 and is authorized, after consulting with PHMSA, TSA, and the Surface Transportation Board, to require a railroad to use an alternative route other than the route selected by the railroad if it is determined that the railroad's route selection documentation and underlying analysis are deficient and fail to establish that the route chosen poses the least overall safety and security risk based on the information available. 49 CFR 209.501.

On January 23, 2014, in response to its investigation of the Lac-Mégantic accident, the NTSB issued three recommendations to PHMSA and three similar recommendations to FRA. Recommendation R–14–4 requested PHMSA work with FRA to expand hazardous materials route planning and selection requirements for railroads to include key trains transporting flammable liquids as defined by the AAR Circular No. OT–55–N. Additionally, where technically feasible, NTSB recommended that rerouting be required to avoid transportation of such hazardous materials through populated and other sensitive areas.

E. Notification

Notification of hazardous materials routes to appropriate personnel, such as emergency responders, of certain hazardous materials can aid in emergency preparation and in some instances emergency response, should an accident occur. As mentioned previously, in accordance with the routing requirements in § 172.820 of the HMR, a rail carrier must identify a point of contact for routing issues that may arise involving the movement of covered materials and provide the contact information to the following:

1. State and/or regional fusion centers that have been established to coordinate with state, local, and tribal officials on security issues within the area encompassed by the rail carrier's rail system; [16] and

2. State, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who have contacted the carrier regarding routing decisions.

This serves as the current notification procedure for what have historically been known as the most highly hazardous materials transported by rail. In addition, an emergency order (Docket No. DOT–OST–2014–0067 [17]) published on May 7, 2014, requires all railroads that operate trains containing one million gallons or more of Bakken crude oil to notify SERCs about the operation of these trains through their States.

F. Oil Spill Response Planning

PHMSA's regulations, see 49 CFR part 130, prescribe prevention, containment, and response planning requirements applicable to transportation of oil [18] by motor vehicles and rolling stock. The purpose of a response plan is to ensure that personnel are trained and available and equipment is in place to respond to an oil spill, and that procedures are established before a spill occurs, so that required notifications and appropriate response actions will follow quickly when there is a spill. PHMSA and FRA are addressing the issue of oil spill response plans in a separate rulemaking action. For a detailed description of PHMSA's oil spill response plan requirements, search for docket ''PHMSA–2014–0105'' at *www.regulations.gov*.

G. Classification

An offeror's responsibility to classify and describe a hazardous material is a key requirement under the HMR. In accordance with § 173.22 of the HMR, it is the offeror's responsibility to properly ''class and describe a hazardous material in accordance with parts 172 and 173 of the HMR.'' For transportation purposes, classification is ensuring the proper hazard class, packing group, and shipping name are assigned to a particular material. The HMR do not prescribe a specific test frequency to classify hazardous materials. However, the HMR clearly intend for the frequency and type of testing to be based on an offeror's knowledge of the hazardous material, with specific consideration given to the nature of hazardous material involved, the variety of the sources of the hazardous material, and the processes used to handle and prepare the hazardous material. Section 173.22 also requires offerors to identify all relevant properties of the hazardous material to comply with complete hazard communication, packaging, and operational requirements in the HMR. While the HMR do not prescribe specific requirements to quantify properties relevant to packaging selection, the offeror must follow the general packaging requirements in part 173, subpart B. For example, as indicated in § 173.24(e), even though certain packagings are authorized for a specific HMR entry, it is the responsibility of the offeror to ensure that each packaging is compatible with its specific lading. In addition, offerors must know the specific gravity of the hazardous material at certain temperatures to ensure that outage is considered when loading a rail tank car or cargo tank motor vehicle per § 173.24b(a).

Once an offeror has classified and described the material; selected the appropriate packaging; loaded the packaging; and marked, labeled, and placarded the packaging and/or transport vehicle in accordance with the HMR, the offeror must ''certify'' the shipment per § 172.204 of the HMR. The certification statement indicates the HMR were followed and that all requirements have been met. As such, the offeror is responsible for certifying its material has been properly classified and all packaging requirements have been met. Improper classification can have significant negative impacts on transportation safety as a material may be offered for transportation in an inappropriate package.

The physical and chemical properties of unrefined petroleum-based products are complex and can vary by region, time of year, and method of extraction. Heating, agitation, and centrifugal force are common methods of separation for the initial treatment of unrefined petroleum to reduce the range of values of the physical and chemical properties. These methods eliminate much of the gaseous hydrocarbons, sediments, and water from the bulk material. Blending crude oil from different sources is the most common method to achieve a uniform material. However, there may still be considerable variation between mixtures where separation or blending has occurred at different times or locations. While blending may generate a uniform profile for an individual mixture of the material, it does not eliminate the gaseous hydrocarbons or the related hazards. The separation and blending methods both create a new product or additional byproducts that may result in the need to transport flammable gases in addition to flammable liquids. Manufactured goods and refined products, by definition, are at the other end of the spectrum from unrefined or raw materials. This means that the physical and chemical

[16] *http://www.dhs.gov/fusion-center-locations-and-contact-information.*

[17] See *http://www.dot.gov/briefing-room/emergency-order.*

[18] For purposes of 49 CFR part 130, *oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with the wastes other than dredged spoil. 49 CFR 130.5. This includes non-petroleum oil such as animal fat, vegetable oil, or other non-petroleum oil.

properties are more predictable as they are pure substances or well-studied mixtures.

Crude oil transported by rail is extracted from different sources and is most often blended in large storage tanks before being loaded into rail tank cars at transloading facilities. In rare cases, the crude oil is transferred directly from a cargo tank to a rail car which may result in more variability of properties among the rail tank cars. PHMSA and FRA completed audits of crude oil loading facilities, prior to the issuance of the February 26, 2014, Emergency Restriction/Prohibition Order, indicated that the classification of crude oil being transported by rail was often based solely on a Safety Data Sheet (SDS). The information is usually generic and provides only basic data and offers a wide range of values for a limited number of material properties. The flash point and initial boiling point ranges on SDS referenced during the audits crossed the packaging group threshold values making it difficult to determine the proper packing group assignment. In these instances, it is likely no validation of the information is performed at an interval that would allow for detection of variability in material properties.

In the case of a flammable liquid (excluded from being defined as a gas per § 171.8 of the HMR), the proper classification is based on the flash point and initial boiling point. See § 173.120 of the HMR. The offeror may additionally need to identify properties such as corrosivity, vapor pressure, specific gravity at loading and reference temperatures, and the presence and concentration of specific compounds (*e.g.* sulfur) to further comply with complete packaging requirements.

In addition to the regulations detailing the offeror's responsibility, the rail and oil industry, along with PHMSA's input, have developed a recommended practice (RP) designed to improve the crude oil rail safety through proper classification and loading practices. This effort was led by the API and resulted in the development of American National Standards Institute (ANSI) recognized recommend practice, see ANSI/API RP 3000, ''*Classifying and Loading of Crude Oil into Rail Tank* Cars.'' This recommend practice, which, during its development, went through a public comment period in order to be designated as an American National Standard, addresses the proper classification of crude oil for rail transportation and quantity measurement for overfill prevention when loading crude oil into rail tank cars. This recommended practice was finalized in September 2014, after the NPRM was published. The development of this recommended practice demonstrates the importance of proper classification.

The NTSB also supports routine testing for classification of hazardous materials, such as petroleum crude oil. On January 23, 2014, as a result of its investigation of the Lac-Mégantic accident, the NTSB issued three recommendations to PHMSA and FRA. Safety Recommendation R–14–6 [19] requested that PHMSA require shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation. This and other NTSB Safety Recommendations are discussed in further detail in the ''NTSB Safety Recommendations'' portion of this document.

H. Packaging/Tank Car

As mentioned previously, in the classification section, proper classification is essential when selecting an appropriate packaging for the transportation of hazardous materials. The HMR provides a list of authorized packagings for each hazardous material. The hazardous materials table (HMT) of § 172.101 provides the list of packagings authorized for use by the HMR based on the shipping name of a hazardous material. For each proper shipping name, bulk packaging requirements are provided in Column (8C) of the HMT.

The offeror must select a packaging that is suitable for the properties of the material and based on the packaging authorizations provided by the HMR. With regard to package selection, the HMR require in § 173.24(b) that each package used for the transportation of hazardous materials be ''designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation . . . there will be no identifiable (without the use of instruments) release of hazardous materials to the environment [and] . . . the effectiveness of the package will not be substantially reduced.'' Under this requirement, offerors must consider how the properties of the material (which can vary depending on temperature and pressure) could affect the packaging.

The packaging authorizations are currently indicated in the HMT and part 173, subpart F. DOT Specification 111 tank cars are authorized for low, medium, and high-hazard liquids and solids (equivalent to Packing Groups III, II, I, respectively). Packing groups are designed to assign a degree of danger presented within a particular hazard class. Packing Group I poses the highest danger (''great danger'') and Packing Group III the lowest (''minor danger'').[20] In addition, the general packaging requirements prescribed in § 173.24 provide additional consideration for selecting the most appropriate packaging from the list of authorized packaging identified in column (8) of the HMT.

For most flammable liquids, the authorized packaging requirements for a PG I material are provided in § 173.243 and for PGs II and III in § 173.242. The following table is provided as a general guide for the packaging options for rail transport provided by the HMR for flammable liquids.

TABLE 6—TANK CAR OPTIONS [21]

Flammable liquid, PG I	Flammable liquid, PG II and III
DOT 103	DOT 103.
DOT 104	DOT 104.
DOT 105	DOT 105.
DOT 109	DOT 109.
DOT 111	DOT 111.
DOT 112	DOT 112.
DOT 114	DOT 114.
DOT 115	DOT 115.
DOT 120	DOT 120.
	AAR 206W.

Note 1. Sections 173.241, 173.242, and 173.243 authorize the use of the above tank cars.

Note 2. DOT 103, 104,105, 109, 112, 114, and 120 tank cars are pressure tank cars (HMR; Part 179, subpart C).

Note 3. DOT 111 and 115 tank cars are non-pressure tank cars (HMR; Part 179, subpart D).

Note 4. AAR 203W, AAR 206W, and AAR 211W tank cars are non-DOT specification tank cars that meet AAR standards. These tank cars are authorized under § 173.241 of the HMR (see Special Provision B1, as applicable).

Note 5. DOT 114 and DOT 120 pressure cars are permitted to have bottom outlets and, generally, would be compatible with the DOT 111.

The DOT Specification 111 tank car is one of several cars currently authorized

[19] NTSB Recommendation 14–6 .*http://phmsa.dot.gov/PHMSA/Key_Audiences/Hazmat_Safety_Community/Regulations/NTSB_Safety_Recommendations/Rail/ci.R-14-6,Hazmat.print.*

[20] Packing groups, in addition in indicating risk of the material, can trigger levels of varying requirements. For example, packing groups can indicate differing levels of testing requirements for a non-bulk packaging or the need for additional operational requirements, such as security planning requirements.

[21] Additional information on tank car specifications is available at the following URL: *http://www.bnsfhazmat.com/refdocs/1326686674.pdf.*

by the HMR for the rail transportation of many hazardous materials, including ethanol, crude oil, and other flammable liquids. For a summary of the design requirements of the DOT Specification 111 tank car, see Table 13 in the tank car portion of the discussion of comments.

In published findings from the June 19, 2009, incident in Cherry Valley, Illinois, the NTSB indicated that the DOT Specification 111 tank car can almost always be expected to breach in the event of a train accident resulting in car-to-car impacts or pileups.[22] In addition, PHMSA received numerous petitions encouraging rulemaking, and both FRA and PHMSA received letters from members of Congress urging prompt, responsive actions from the Department. The AAR created the T87.6 Task Force on July 20, 2011, to consider several enhancements to the DOT Specification 111 tank car design and rail carrier operations to enhance rail transportation safety. Simultaneously, FRA conducted research on long-standing safety concerns regarding the survivability of the DOT Specification 111 tank cars designed to current HMR standards and used for the transportation of ethanol and crude oil, focusing on issues such as puncture resistance and top fittings protection. The research indicated that special consideration is necessary for the transportation of ethanol and crude oil in DOT Specification 111 tank cars, especially in HHFTs.

In addition, PHMSA and FRA reviewed the regulatory history pertaining to flammable liquids transported in tank cars. Prior to 1990, the distinction between material properties that resulted in different packaging, for flammable liquids in particular, was described in far more detail in § 173.119. Section 173.119 indicated that the packaging requirements for flammable liquids are based on a combination of flash point, boiling point, and vapor pressure. The regulations provided a point at which a flammable liquid had to be transported in a tank car suitable for compressed gases, commonly referred to as a ''pressure car'' (*e.g.,* DOT Specifications 105, 112, 114, 120 tank cars).

In 2011, the AAR issued Casualty Prevention Circular (CPC) 1232, which outlines industry requirements for certain DOT Specification 111 tanks ordered after October 1, 2011, intended for use in ethanol and crude oil service (construction approved by FRA on January 25, 2011).[23] The CPC–1232 requirements are intended to improve the crashworthiness of the tank cars and include a thicker shell, head protection, top fittings protection, and pressure relief valves with a greater flow capacity.

Despite these improvements of the CPC–1232 on April 6, 2015 the NTSB issued additional recommendations related to legacy DOT Specification 111 tank cars as well as the newer CPC–1232 tank cars. These recommendations, R–15–14 and R–15–15, requested that PHMSA require that all new and existing tank cars used to transport all Class 3 flammable liquids be equipped with thermal protection systems that meet or exceed the thermal performance standards outlined in Title 49 Code of Federal Regulations 179.18(a) and be equipped with appropriately sized pressure relief devices that allow the release of pressure under fire conditions to ensure thermal performance that meets or exceeds the requirements of Title 49 Code of Federal Regulations 179.18(a), and that minimizes the likelihood of energetic thermal ruptures.

III. Recent Regulatory Actions Addressing Rail Safety

The August 1, 2014 NPRM extensively detailed the regulatory actions of PHMSA and FRA that were relevant to the transportation of large quantities of flammable liquids by rail. Specifically, the NPRM detailed regulatory actions that addressed prevention, mitigation, and response through risk reduction. For a description of the PHMSA and FRA regulatory actions that were taken prior to the August 1, 2014 NPRM please refer to the ''*Regulatory Actions*'' section of the NPRM. We provide a brief summary below of regulatory actions taken by PHMSA and FRA concurrently with, and after the August 1, 2014 NPRM. In addition we highlight some additional regulatory actions not discussed in the NPRM.

A. Rulemaking Actions

On August 1, 2014, in conjunction with its NPRM—''Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (2137–AE91)'', PHMSA, in consultation with the FRA, published an Advanced Notice of Proposed Rulemaking (ANPRM) that sought comment on potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard flammable trains (HHFTs) based on thresholds of crude oil that apply to an entire train consist (See Docket PHMSA–2014–0105).

On August 9, 2014, FRA published an NPRM that proposed amendments to strengthen the requirements relating to the securement of unattended equipment. Specifically, FRA proposed to codify many of the requirements already included in its Emergency Order 28, Establishing Additional Requirements for Attendance and Securement of Certain Freight Trains and Vehicles on Mainline Track or Mainline Siding Outside of a Yard or Terminal. FRA proposed to amend existing regulations to include additional securement requirements for unattended equipment, primarily pertaining to trains transporting PIH materials or large volumes of Division 2.1 (flammable gases), Class 3 (flammable or combustible liquids, including crude oil and ethanol), and Division 1.1 or 1.2 (explosives) hazardous materials. For these trains, FRA proposed requiring attendance on all mainline and sidings that are outside of and not adjacent to a yard unless the railroad has determined it would be appropriate to leave the equipment unattended at the specific location and included the location in its securement plan. FRA also proposed requirements relating to job briefings and communication with qualified railroad personnel to verify equipment has been properly secured before leaving it unattended. Attendance would be required for any equipment not capable of being secured in accordance with the proposed and existing requirements. FRA's NPRM also proposed to require railroads to verify securement in instances where they have knowledge that emergency responders accessed unattended equipment. Finally, FRA proposed a new requirement that all locomotives left unattended outside of a yard be equipped with an operative exterior locking mechanism. *See* 75 FR 53356 (Sept. 9, 2014).

In addition to the regulatory initiatives concerning oil spill response and railroad equipment securement discussed above, PHMSA and FRA are committed to clarifying and improving our existing regulations through active and future rulemakings. As a result PHMSA and FRA continue to work with the regulated community and general public to implement existing regulations and improve safety through regulatory action. PHMSA and FRA have many initiatives underway to address freight

[22] NTSB, *Railroad Accident Report—Derailment of CN Freight Train U70691–18 With Subsequent Hazardous Materials Release and Fire, http://www.ntsb.gov/investigations/AccidentReports/Reports/RAR1201.pdf* (February 2012).

[23] See ''Background'' section of the August 2014 NPRM for information regarding a detailed description of PHMSA and FRA actions to allow construction under CPC–1232.

rail safety. Key regulatory actions are outlined below:

TABLE 7—PHMSA AND FRA SAFETY INITIATIVES

Safety initiative	Project summary	Current status
Risk Reduction Program (2130–AC11).	FRA is developing an NPRM that will consider appropriate contents for Risk Reduction Programs by Class I freight railroads and how they should be implemented and reviewed by FRA. A Risk Reduction Program is a structured program with proactive processes and procedures developed and implemented by a railroad to identify hazards and to mitigate, if not eliminate, the risks associated with those hazards on its system. A Risk Reduction Program encourages a railroad and its employees to work together to proactively identify hazards and to jointly determine what action to take to mitigate or eliminate the associated risks.	ANPRM was published on December 8, 2010, and the comment period ended on February 7, 2011. Public hearings regarding this rule were held on July 19, 2011, in Chicago, IL on July 21, 2011, in Washington, DC. The NPRM was published on February 27, 2015 and the comment period ended April 27, 2015.
Track Safety Standards: Improving Rail Integrity (2130–AC28).	FRA's final rule prescribes specific requirements for effective rail inspection frequencies, rail flaw remedial actions, minimum operator qualifications, and requirements for rail inspection records. The bulk of this regulation codifies current good practices in the industry. In addition, it removes the regulatory requirements concerning joint bar fracture reporting. Section 403(c) of the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432, 122 Stat. 4848 (October 16, 2008)) (49 U.S.C. 20142 note)) mandated that FRA review its existing regulations to determine if regulatory amendments should be developed that would revise, for example, rail inspection frequencies and methods and rail defect remedial actions and consider rail inspection processes and technologies.	FRA published this rule on January 24, 2014 (79 FR 4234). The final rule became effective on March 25, 2014.
Positive Train Control (PTC) (multiple rulemakings).	PTC is a processor-based/communication-based train control system designed to prevent train accidents. The RSIA mandates that PTC be implemented across a significant portion of the Nation's rail system by December 31, 2015. See 49 U.S.C. 20157. With limited exceptions and exclusions, PTC is required to be implemented on Class I railroad main lines (i.e., lines with over 5 million gross tons annually) over which any PIH or toxic inhalation hazard (TIH) materials are transported; and, on any railroad's main lines over which regularly scheduled passenger intercity or commuter operations are conducted. It is currently estimated this will equate to approximately 70,000 miles of track and will involve approximately 20,000 locomotives. PTC technology is capable of automatically controlling train speeds and movements should a train operator fail to take appropriate action for the conditions at hand. For example, PTC can force a train to a stop before it passes a signal displaying a stop indication, or before diverging on a switch improperly lined, thereby averting a potential collision. PTC systems required to comply with the requirements of Subpart I must reliably and functionally prevent: Train-to-train collisions; Overspeed derailments; Incursion into an established work zone; and Movement through a switch in the wrong position.	FRA published the most recent PTC systems final rule on August 22, 2014 (79 FR 49693), addressing the *de minimis* exception, yard movements, en route failures, and other issues. The final rule became effective on October 21, 2014.
Securement	The new measures proposed in the securement NPRM would require: (1) Crew members leaving equipment carrying specified hazardous materials unattended in certain areas to follow certain additional procedures to ensure proper securement. (2) Railroads to develop a plan identifying such locations or circumstances. (3) Railroads to verify securement using qualified persons; and ensure that locks on locomotive cab are secure. Include securement requirements in job briefings. (4) Railroads to perform additional inspections by qualified persons when emergency responders have been on equipment. (5) Railroads to install locking mechanisms on locomotive doors and repair them in a timely manner. The proposed rule covers equipment containing poisonous by inhalation (PIH) materials and those defined as Division 2.1 (flammable gas), Class 3 (flammable or combustible liquid), Class 1.1 or 1.2 (explosive) materials,[24] or a hazardous substance listed in 49 CFR § 173.31(f)(2). This includes most crude oil moved in the United States.	The NPRM was published on September 9, 2014, and the comment closed on November 10, 2014.
Crew Size	FRA has initiated a rulemaking to address the appropriate oversight to ensure safety related train crew size.	Developing Rulemaking.
Retrospective Regulatory Review 49 CFR part 174—Carriage by Rail (78 FR 42998).	As part of a retrospective regulatory review PHMSA and FRA reviewed the part 174 ''Carriage by Rail'' section of our regulations in an effort to identify areas which could be revised to improve clarity. On August 27–28, 2013 as part of this comprehensive review of operational factors that impact the transportation of hazardous materials by rail PHMSA and FRA held a public meeting.	PHMSA and FRA have evaluated the comments from the public meeting and intend to move forward with revisions to part 174.

TABLE 7—PHMSA AND FRA SAFETY INITIATIVES—Continued

Safety initiative	Project summary	Current status
Oil Spill Response Plans for High-Hazard Flammable Trains (PHMSA–2014–0105).	In this ANPRM, PHMSA, in consultation with FRA, sought comment on potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard flammable trains (HHFTs) based on thresholds of crude oil that apply to an entire train consist.	Published ANPRM on August 1, 2014 and the comment closed on September 30, 2014. Developing follow-up NPRM.

B. Emergency Orders

The Department has the authority to issue emergency orders in certain instances and take action on safety issues that constitute an imminent hazard to the safe transportation of hazardous materials. Railroad transportation of hazardous materials in commerce is subject to the authority and jurisdiction of the Secretary of Transportation (Secretary), including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard. 49 U.S.C. 5121(d). Therefore, an emergency order can be issued if the Secretary has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials.

The NPRM extensively detailed the departmental actions taken, in the form of emergency orders prior to August 1, 2014. Please refer to the ''*Emergency Orders and Non-Regulatory Actions*'' section of August 1, 2014 NPRM for a detailed description of emergency orders issued by the Department that are relevant to the transportation by rail of large quantities of flammable liquids. The table below briefly summarizes those orders and the additional emergency order issued since the NPRM publication.

TABLE 8—EMERGENCY ORDERS ISSUED RELATED TO RAIL TRANSPORT OF FLAMMABLE LIQUIDS

Emergency order	Date issued	Action taken
Emergency Order 28 (78 FR 48218)[25] Issued by FRA.	August 7, 2013	Addressed securement and attendance issues related to securement of certain hazardous materials trains; specifically, trains with:
		(1) Five or more tank carloads of any one or any combination of materials poisonous by inhalation as defined in Title 49 CFR § 171.8, and including anhydrous ammonia (UN1005) and ammonia solutions (UN3318); or
		(2) 20 rail carloads or intermodal portable tank loads of any one or any combination of materials listed in (1) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive,[26] or hazardous substance listed in 49 CFR 173.31(f)(2).
Docket No. DOT–OST–2014–0025.[27]	February 25, 2014; revised and amended Order on March 6, 2014.	Required those who offer crude oil for transportation by rail to ensure that the product is properly tested and classified in accordance with Federal safety regulations.[28] The March 6, 2014 Amended Emergency Restriction/Prohibition Order required that all rail shipments of crude oil that are properly classed as a flammable liquid in Packing Group (PG) III material be treated as PG I or II material, until further notice. The amended emergency order also instructed that PG III materials be described as PG III for the purposes of hazard communication.
Docket No. DOT–OST–2014–0067.	May 7, 2014	Required all railroads that operate trains containing one million gallons or more of Bakken crude oil to notify SERCs about the operation of these trains through their States. Specifically, identify each county, or a particular state or commonwealth's equivalent jurisdiction (e.g., Louisiana parishes, Alaska boroughs, Virginia independent cities), in the state through which the trains will operate.
FRA Emergency Order No. 30.	April 27, 2015	Mandated that trains affected by this order not exceed 40 miles per hour (mph) in high-threat urban areas (HTUAs) as defined in 49 CFR Part 1580. Under the order, an affected train is one that contains: (1) 20 or more loaded tank cars in a continuous block, or 35 or more loaded tank cars, of Class 3 flammable liquid; and, (2) at least one DOT Specification 111 (DOT–111) tank car (including those built in accordance with Association of American Railroads (AAR) Casualty Prevention Circular 1232 (CPC–1232)) loaded with a Class 3 flammable liquid.

On June 30, 2014 FRA published an information collection request (ICR) notice in the **Federal Register**, 79 FR 36860 with a 60-day comment period soliciting comments on the May 7, 2014 emergency order.[29]

On August 29, 2014, FRA received a joint comment from the AAR and the American Short Line and Regional Railroad Association (ASLRRA) raising three main points. First, AAR and ASLRRA asserted that the crude oil routing information in the May 7, 2014 emergency order requires railroads to provide to SERCs sensitive information from a security perspective and the information should only be available to persons with a need-to-know for the

[24] Should have read ''Division'' instead of ''Class.''

[25] See *http://www.gpo.gov/fdsys/pkg/FR-2013-08-07/pdf/2013-19215.pdf.*

[26] Should have read ''Division'' instead of ''Class.''

[27] See *http://www.dot.gov/sites/dot.gov/files/docs/Amended%20Emergency%20Order%20030614.pdf.*

[28] See Docket No. DOT–OST–2014–0025. See also *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Amended_Emergency_Order_030614.pdf.*

[29] See *http://www.gpo.gov/fdsys/pkg/FR-2014-06-30/html/2014-15174.htm.*

information (*e.g.,* emergency responders and emergency response planners). Second, AAR and ASLRRA asserted that the same information is commercially sensitive information that should remain confidential and not be publically available. Finally, AAR and ASLRRA asserted that the emergency order is not serving a useful purpose as the information required by the emergency order to be provided to the SERCs is already provided to emergency responders through AAR Circular OT–55–N. See AAR, ''Circular OT–55–N: Recommended Railroad Operating Practices For Transportation of Hazardous Materials,'' Aug. 5, 2013 (OT–55).

On October 3, 2014, FRA published a 30-day ICR notice in the **Federal Register**, 79 FR 59891–59893 to extend the current emergency ICR supporting the crude oil train routing reporting requirements of the May 7, 2014 emergency order. In this notice, FRA addressed the security sensitive claim by noting that the information does not fall under any of the fifteen enumerated categories of sensitive security information (SSI) set forth in 49 CFR 15.5 or § 1520.5. The ICR goes on to describe the nature of the information collection and its expected burden.

On April 17, 2015 FRA issued Emergency Order (80 FR 23321) to require that certain trains transporting large amounts of Class 3 flammable liquid through certain highly-populated areas adhere to a maximum authorized operating speed limit.[30] Under Emergency Order, an affected train is one that contains (1) 20 or more loaded tank cars in a continuous block, or 35 or more loaded tank cars, of a Class 3 flammable liquid; and (2) at least one DOT–111 tank car (including those built in accordance with CPC–1232) loaded with a Class 3 flammable liquid. Affected trains must not exceed 40 mph in HTUAs as defined in 49 CFR 1580.3.

FRA issued Emergency Order in the interest of public safety to dictate that an appropriate speed restriction be placed on trains containing large quantities of a flammable liquid, particularly in areas where a derailment could cause a significant hazard of death, personal injury, or harm to the environment until the provisions of this final rule were issued and become effective. Further, by limiting speeds for certain higher risk trains, FRA also hopes to reduce in-train forces related to acceleration, braking, and slack action that are sometimes the cause of derailments.

Emergency Order not only applies to legacy DOT–111 tank cars but newer tank cars built to the CPC–1232 standard. While CPC–1232 tank cars have more robust protections than do legacy DOT–111 tank cars, recent accidents have shown that those cars may still release hazardous material when involved in derailments. Derailments in 2015 in Mt. Carbon, WV, Dubuque, IA, and Galena, IL involved CPC–1232 cars and resulted in the release of hazardous materials from those cars.

Analysis of certain speed restrictions below 40 mph indicated that such restrictions could potentially cause harmful effects on interstate commerce, and actually increase safety risks. Increased safety risks could occur if speed restrictions cause rail traffic delays resulting in trains stopping on main track more often and in trains moving into and out of sidings more often requiring more train dispatching. FRA believes the restrictions in Emergency Order will address an emergency situation while avoiding other safety impacts and harm to interstate commerce and the flow of necessary goods to the citizens of the United States. FRA and DOT will continue to evaluate whether additional action with regard to train speeds is appropriate.

IV. Non-Regulatory Actions Addressing Rail Safety

The August 1, 2014, NPRM extensively detailed non-regulatory actions taken to address the risks associated with rail shipment of large quantities of flammable liquids prior to the publication of that document. These non-regulatory actions included but were not limited to: (1) Safety Alerts and Advisories, (2) Operation Classification, (3) the DOT Secretary's Call to Action, and (4) PHMSA and FRA outreach and education efforts. Please refer to the ''*Emergency Orders and Non-Regulatory Actions*'' section of August 1, 2014 NPRM or the PHMSA Web site [31] for a description these non-regulatory efforts that are relevant to rail shipment of large quantities of flammable liquids. Below is a brief description of PHMSA and FRA efforts since the publication of the August 1, 2014 NPRM.

A. Safety Alerts and Advisories

Safety advisories are documents published in the **Federal Register** that inform the public and regulated community of a potential dangerous situation or issue. In addition to safety advisories, PHMSA and FRA may also issue other notices, such as safety alerts. Please refer to the ''*Emergency Orders and Non-Regulatory Actions*'' section of the August 1, 2014, NPRM for a description of safety alerts and advisories that are relevant to rail shipment of large quantities of flammable liquids issued prior to the publication of the NPRM.

On April 17, 2015 PHMSA issued a notice (Notice No. 15–7; 80 FR 22781) to remind hazardous materials shippers and carriers of their responsibility to ensure that current, accurate and timely emergency response information is immediately available to emergency response officials for shipments of hazardous materials, and such information is maintained on a regular basis.[32] This notice outlined existing regulatory requirements applicable to hazardous materials shippers (including re-offerors) and carriers found in the HMR, specifically in Subpart G of Part 172.

PHMSA Notice 15–7 emphasized that the responsibility to provide accurate and timely information is a shared responsibility for all persons involved in the transportation of hazardous materials. It is a shipper's responsibility to provide accurate emergency response information that is consistent with both the information provided on a shipping paper and the material being transported. Likewise, re-offerors of hazardous materials must ensure that this information can be verified to be accurate, particularly if the material is altered, mixed or otherwise repackaged prior to being placed back into transportation. In addition, carriers must ensure that emergency response information is maintained appropriately, is accessible and can be communicated immediately in the event of a hazardous materials incident.

Also issued on April 17, 2015 was a joint FRA and PHMSA safety advisory notice (FRA Safety Advisory 2015–02; PHMSA Notice No. 15–11; 80 FR 22778). This joint safety advisory notice was published to remind railroads operating an HHFT, defined as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block, or a train with 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train, as well as the offerors of Class 3 flammable liquids transported on such trains, that certain information may be

[30] See *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_2DA43BA3704E57F1958957625273D89A29FF0B00/filename/EO_30_FINAL.pdf.*

[31] See detailed chronology of PHMSA efforts at *http://phmsa.dot.gov/hazmat/osd/chronology.*

[32] See: *http://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09436.pdf.*

required by PHMSA and/or FRA personnel during the course of an investigation immediately following an accident.

Following recent derailments involving HHFTs, FRA and PHMSA conducted several post-accident investigations and sought to ensure that stakeholders were fully aware of each agency's investigative authority and cooperated with agency personnel conducting such investigations, where time is of the essence in gathering evidence. Therefore, PHMSA and FRA issued the joint safety advisory notice to remind railroads operating HHFTs, and offerors of Class 3 flammable liquids being transported aboard those trains, of their obligation to provide PHMSA and FRA, as expeditiously as possible, with information agency personnel need to conduct investigations immediately following an accident or incident.

FRA issued a safety advisory notice 2015–01 (80 FR 23318) on April 17, 2015 to make recommendations to enhance mechanical safety of tank cars in HHFTs.[33] Recent derailments have occurred involving trains transporting large quantities of petroleum crude oil and ethanol. Preliminary investigation of the Galena, IL derailment involving a crude oil train indicates that a mechanical defect involving a broken tank car wheel may have caused or contributed to the incident. Safety Advisory 2015–01 recommended that railroads use highly qualified individuals to conduct the brake and mechanical inspections and recommends a reduction to the impact threshold levels the industry currently uses for wayside detectors that measure wheel impacts to ensure the wheel integrity of tank cars in those trains.

B. Operation Classification

As part of PHMSA and FRA's overall rail safety efforts, the administration launched a testing and sampling program (*Operation Classification)* in August 2013 to verify that crude oil is being properly classified in accordance with Federal regulations. Early indications from the July 6, 2013, derailment in Lac-Mégantic were that the crude oil involved in that accident was misclassified. Specifically, the product was assigned a PG III classification (lowest hazard), despite meeting the criteria for PG II. Therefore, its hazards were not correctly identified. This was later confirmed by the Transportation Safety Board of Canada's (TSB) in Railway Investigation Report R13D0054 (Aug. 19, 2014).[34]

Operation Classification continues today, and activities include unannounced inspections, data collection, and sampling at strategic terminal and loading locations for crude oil. PHMSA investigators test samples from various points along the crude oil transportation chain: From cargo tanks that deliver crude oil to rail loading facilities, from storage tanks at the facilities, and from pipelines connecting storage tanks to rail cars that would move the crude across the country. Concurrently, with the publication of the August 1, 2014 NPRM, PHMSA issued an update on the results of PHMSA's sampling and testing effort. See Operation Safe Delivery Update.[35] Based upon the results obtained from sampling and testing, the majority of crude oil analyzed displayed characteristics consistent with those of a Class 3 flammable liquid, PG I or II, with predominance to PG I, the most dangerous Packing Group of Class 3 flammable liquids with lower flash points and initial boiling points than packing groups II and III.

Since the issuance of PHMSA's ''Operation Safe Delivery Update,'' PHMSA has continued its testing and sampling activities and refined the collection methods. PHMSA has purchased closed syringe-style cylinders and is collecting all samples using these cylinders. Utilizing these types of cylinders minimizes the opportunity for any dissolved gases to be lost to the air during collection, thus providing increased accuracy. In addition, PHMSA has taken samples at other shale play locations around the United States to compare their characteristics to that of crude oil from the Bakken region. PHMSA plans to provide subsequent updates of its testing and sampling activities as we move forward and to work with the regulated community to ensure the safe transportation of crude oil across the nation.

As mentioned previously the primary intent of PHMSA's sampling and analysis of crude oil is to determine if shippers are properly classifying crude oil for transportation. PHMSA also uses this data to quantify the range of physical and chemical properties of crude oil. While the information and data obtained from the sampling and analysis helped quantify the range of physical and chemical properties of crude oil, this data did not inform the regulatory amendments in the August 1, 2014, NPRM or this rulemaking.

C. Call to Action

On January 9, 2014, the Secretary issued a ''Call to Action'' to actively engage all the stakeholders in the crude oil industry, including CEOs of member companies of API and CEOs of the railroads. In a meeting held on January 16, 2014, the Secretary and the Administrators of PHMSA and FRA requested that offerors and carriers identify prevention and mitigation strategies that can be implemented quickly. As a result of this meeting, the rail and crude oil industries agreed to voluntarily consider or implement potential improvements, including speed restrictions in high consequence areas, alternative routing, the use of distributive power to improve braking, and improvements in emergency response preparedness and training. On January 22, 2014, the Secretary sent a letter to the attendees recapping the meeting and stressing the importance of this issue.[36] The August 1, 2014, NPRM provided a detailed listing of all voluntary actions the crude oil and rail industry agreed to take. *See* ''Emergency Orders and Non-Regulatory Actions'', 79 FR at 45031. Since the publication of the August 1, 2014, NPRM the following items [37] related to the call to action have been completed.

- Recommended Practice 3000 (RP 3000)—API published a new set of recommended practices for testing and classifying crude oil for rail shipment and loading it into rail tank cars. These guidelines were the product of extensive work and cooperation between the oil and gas industry, the freight rail industry, and PHMSA to ensure crude shipments are packaged appropriately, and emergency responders have the right information. RP 3000 provides guidance on the material characterization, transport classification, and quantity measurement for overfill prevention of petroleum crude oil for the loading of rail tank cars. RP 3000 identifies criteria for determining the frequency of sampling and testing of petroleum crude oil for transport classification. It discusses how to establish a sampling and testing program, and provides an example of such a program.

[33] See: *http://www.gpo.gov/fdsys/pkg/FR-2015-04-27/pdf/2015-09612.pdf.*

[34] See *http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054.pdf.*

[35] See *http://phmsa.dot.gov/pv_obj_cache/pv_obj_id_8A422ABDC16B72E5F166FE34048CCCBFED3B0500/filename/07_23_14_Operation_Safe_Delivery_Report_final_clean.pdf.*

[36] *http://phmsa.dot.gov/pv_obj_cache/pv_obj_id_AAFF3C0BBA4D0B46209E5528662AC5427B6F0700/filename/Letter_from_Secretary_Foxx_Follow_up_to_January_16.pdf.*

[37] This is not a comprehensive list. These items simply highlight some of the recently completed call to action items.

• Transportation Technology Center Inc. (TTCI) Training—AAR and Railroad Subscribers committed considerable resources to develop and provide a hazardous material transportation training curriculum applicable to petroleum crude oil transport for emergency responders. This training was completed in the summer of 2014 and continues to be refined.

• Speed Reduction—Railroads began operating certain trains at 40 mph on July 1, 2014. This voluntary restriction applies to any HHFT with at least one non-CPC 1232 tank car loaded with crude oil or one non-DOT specification tank car loaded with crude oil while that train travels within the limits of any high-threat urban area (HTUA) as defined by 49 CFR 1580.3.

D. Stakeholder Outreach

PHMSA and FRA are taking a focused approach to increase community awareness and preparedness for response to incidents involving bulk transport of crude oil and other high-hazard flammable shipments by rail such as ethanol. Specific efforts have taken place to develop appropriate response outreach and training tools to mitigate the impact of future incidents. The following are some of the actions taken to by PHMSA to enhance emergency response to rail crude oil incidents over the past year.

In February 2014, PHMSA hosted a stakeholder meeting with participants from the emergency response community, the railroad industry, Transport Canada and Federal partners FRA, and FMCSA. The objective was to discuss emergency preparedness related to incidents involving transportation of crude oil by rail. The discussion topics included: Current state of crude oil risk awareness and operational readiness/capability; familiarity with bulk shippers of crude oil, emergency response plans and procedures; available training resources (sources, accessibility, gaps in training); and the needs of emergency responders/public safety agencies.

In May 2014, in conjunction with the Virginia Department of Fire Programs, PHMSA hosted a ''Lessons Learned'' Roundtable forum that consisted of a panel of fire chiefs and emergency management officials from some of the jurisdictions that experienced a crude oil or ethanol rail transportation incident. The purpose of this forum was to share firsthand knowledge about their experiences responding to and managing these significant rail incidents. In attendance were public safety officials from Aliceville, AL, Cherry Valley, IL, Cass County, ND, and the Lynchburg, VA fire department. Based on the input received from the forum participants, PHMSA published a ''*Crude Oil Rail Emergency Response Lessons Learned Roundtable Report''* outlining the key factors that were identified as having a direct impact on the successful outcome of managing a crude oil transportation incident.[38]

In June 2014, in partnership with FRA and the U.S. Fire Administration (USFA), PHMSA hosted a stakeholder meeting with hazardous materials response subject matter experts from the public safety, railroads, government, and industry to discuss best practices for responding to a crude oil incident by rail. In coordination with the working group, PHMSA drafted the ''*Commodity Preparedness and Incident Management Reference Sheet.''* This document contains incident management best practices for crude oil rail transportation emergency response operations that include a risk-based hazardous materials emergency response operational framework. The framework provides first responders with key planning, preparedness, and response principles to successfully manage a crude oil rail transportation incident. The document also assists fire and emergency services personnel in decision-making and developing an appropriate response strategy to an incident (*i.e.,* defensive, offensive, or non-intervention).[39] In partnership with the USFA's, National Fire Academy (NFA), a series of six coffee break training bulletins were published and widely distributed to the emergency response community providing reference to the response document.[40]

In October 2014, to further promote the ''*Commodity Preparedness and Incident Management Reference Sheet,''* PHMSA contracted with the Department of Energy, Mission Support Alliance-Hazardous Materials Management and Emergency Preparedness (MSA–HAMMER) to develop the *Transportation Rail Incident Preparedness and Response (TRIPR) for Flammable Liquid Unit Trains* training modules. These modules along with three table-top scenarios offer a flexible approach to increasing awareness of emergency response personnel on the best practices and principles related to rail incidents involving hazard class 3 flammable liquids. A key component of this initiative is to learn from past experiences and to leverage the expertise of public safety agencies, rail carriers, and industry subject matter experts in order to prepare first responders to safely manage rail incidents involving commodities such as crude oil and ethanol. These modules are not intended to be a stand alone training program, but are offered to supplement existing programs. Estimated delivery for this project is May 2015.

In December 2014, PHMSA re-engaged the emergency response stakeholder group to allow all parties Federal government, the railroad industry and the response community to provide updates on the various emergency response related initiatives aimed to increase community awareness and preparedness for responding to incidents involving crude oil and other high-hazard flammable shipments by rail.

In addition to PHMSA's efforts mentioned above, in January 2015, The National Response Team (NRT), led by Environmental Protection Agency (EPA), conducted a webinar titled ''*Emerging Risks, Responder Awareness Training for Bakken Crude Oil''* to educate responders on Bakken Crude Oil production and transportation methods along with the health and safety issues facing first responders. In addition to the training webinar, the NRT also intends to conduct a large scale exercise scenario in 2015, to assess federal, state, and local response capabilities to a crude oil incident.

Also in January 2015, the Environmental Protection Agency (EPA) along with other Federal partners including FEMA, USCG, DOE, DOT, and DHS hosted conference calls with state officials and representatives from the appropriate offices, boards, or commissions (emergency response and planning, environmental cleanup, energy, and transportation) that play a role in preparing or responding to an incident involving crude-by-rail. The purpose of these discussions was to gain better understanding of how states are preparing to respond to incidents involving crude oil by rail and to identify key needs from each state. Questions centered on what actions (planning, training, exercises, etc.) have been planned or conducted in the state and/or local communities, what communities or areas have the greatest risk, regional actions or activities states have participated in, and any other related concerns states would like to discuss.

[38] See *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_0903D018579BF84E6914C0BB932607F5B3F50300/filename/Lessons_Learned_Roundtable_Report_FINAL_070114.pdf.*

[39] This document has been widely distributed throughout the emergency response community and is also available on the PHMSA Operation Safe Delivery Web site at *http://www.phmsa.dot.gov/hazmat/osd/emergencyresponse.*

[40] See *http://www.usfa.fema.gov/training/coffee_break/hazmat_index.html.*

Complementing the Federal government's efforts, the railroad industry has also taken on the challenge to address crude oil response. API has built new partnerships between rail companies and oil producers. At the request of FRA, the API is currently developing an outreach program to deliver training to first responders throughout the U.S., particularly in states that have seen a rise in crude oil by rail. This includes working with oil and rail industry members to identify where existing training initiatives and conferences can be utilized to provide the training to as many responders as possible. Lastly, the AAR and API are working together to produce a crude oil by rail safety training video through their partnership with Transportation Community Awareness and Emergency Response (TRANSCAER).

Moving forward, both the railroad industry and the Federal government will continue their efforts to increase preparedness for responding to not only crude oil, but all high-hazard flammable shipments by rail. The stakeholder group will aim to meet again in the spring of 2015 under the unified goal to provide first responders with the key information needed to effectively prepare for and manage the consequences incidents involving bulk shipments of energy products by rail.

In the meantime, PHMSA will continue its efforts to increase community awareness and emergency preparedness through public outreach to state and local emergency responder communities, sustained engagement with experts from emergency response and industry stakeholder groups, and participating on interagency working groups.

V. NTSB Safety Recommendations

As previously discussed, in addition to the efforts of PHMSA and FRA, the NTSB has taken a very active role in identifying the risks posed by the transportation of large quantities of flammable liquids by rail. The NPRM for this rulemaking detailed the actions and recommendations of the NTSB. Since the publication of the August 1, 2014 NPRM, the NTSB has issued additional rail-related safety recommendations. The table below provides a summary of the rail-related NTSB Safety Recommendations and identifies the effect of this action on those recommendations, including those issued to PHMSA and FRA after the issuance of the August 1, 2014 NPRM. It should be noted that although some of these recommendations are not addressed in this rulemaking they are being addressed through other actions, for example, development of guidance materials, outreach to the regulated community, and conducting research projects. Further, some are being considered for other future rulemaking action.

TABLE 9—RAIL-RELATED NTSB SAFETY RECOMMENDATIONS

NTSB Recommendation	Summary	Addressed in this rule?
R–07–4, Issued April 27, 2007 ..	Recommends that PHMSA, with the assistance of FRA, require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.	No.
R–12–5, Issued March 2, 2012	Recommends that PHMSA require all newly manufactured and existing general service tank cars authorized for transportation of denatured fuel ethanol and crude oil in PGs I and II have enhanced tank head and shell puncture resistance systems and top fittings protection that exceed existing design requirements for DOT Specification 111 (DOT–111) tank cars.	Yes.
R–12–6, Issued March 2, 2012	Recommends that PHMSA require all bottom outlet valves used on newly manufactured and existing non-pressure tank cars are designed to remain closed during accidents in which the valve and operating handle are subjected to impact forces.	Yes.
R–12–7, Issued March 2, 2012	Recommends that PHMSA require all newly manufactured and existing tank cars authorized for transportation of hazardous materials have center sill or draft sill attachment designs that conform to the revised AAR design requirements adopted as a result of Safety Recommendation R–12–9.	No.*
R–12–8, Issued March 2, 2012	Recommends that PHMSA inform pipeline operators about the circumstances of the accident and advise them of the need to inspect pipeline facilities after notification of accidents occurring in railroad rights-of-way.	Closed.**
R–14–1, Issued January 23, 2014.	Recommends that FRA work with PHMSA to expand hazardous materials route planning and selection requirements for railroads under the HMR to include key trains transporting flammable liquids as defined by the AAR Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.	Yes.
R–14–2, Issued January 23, 2014.	Recommends that FRA develop a program to audit response plans for rail carriers of petroleum products to ensure that adequate provisions are in place to respond to and remove a worst-case discharge to the maximum extent practicable and to mitigate or prevent a substantial threat of a worst-case discharge.	No.***
R–14–3, Issued January 23, 2014.	Recommends that FRA audit shippers and rail carriers of crude oil to ensure they are using appropriate hazardous materials shipping classifications, have developed transportation safety and security plans, and have made adequate provision for safety and security.	Closed.
R–14–4, Issued January 23, 2014.	Recommends that PHMSA work with FRA to expand hazardous materials route planning and selection requirements for railroads under Title 49 Code of Federal Regulations 172.820 to include key trains transporting flammable liquids as defined by the AAR Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.	Yes.
R–14–5, Issued January 23, 2014.	Recommends that PHMSA revise the spill response planning thresholds contained in Title 49 Code of Federal Regulations Part 130 to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products.	No.***
R–14–6, Issued January 23, 2014.	Recommends that PHMSA require shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation.	Yes.

TABLE 9—RAIL-RELATED NTSB SAFETY RECOMMENDATIONS—Continued

NTSB Recommendation	Summary	Addressed in this rule?
R–14–14, Issued January 23, 2014.	Recommends that PHMSA require railroads transporting hazardous materials through communities to provide emergency responders and local and state emergency planning committees with current commodity flow data and assist with the development of emergency operations and response plans.	Partially.
R–14–18, Issued August 22, 2014.	Recommends that PHMSA take action to ensure that emergency response information carried by train crews is consistent with and is at least as protective as existing emergency response guidance provided in the Emergency Response Guidebook.	No.
R–14–19, Issued August 22, 2014.	Recommends that PHMSA require railroads transporting hazardous materials to develop, implement, and periodically evaluate a public education program similar to Title 49 Code of Federal Regulations Parts 192.616 and 195.440 for the communities along railroad hazardous materials routes.	No.
R–14–20, Issued August 22, 2014.	Recommends that PHMSA collaborate with FRA and ASLRRA and Regional Railroad Association to develop a risk assessment tool that addresses the known limitations and shortcomings of the Rail Corridor Risk Management System software tool.	No.
R–14–21, Issued August 22, 2014.	Recommends that PHMSA collaborate with FRA and ASLRRA and Regional Railroad Association to conduct audits of short line and regional railroads to ensure that proper route risk assessments that identify safety and security vulnerabilities are being performed and are incorporated into a safety management system program.	No.
R–15–14, Issued April 6, 2015 ..	Require that all new and existing tank cars used to transport all Class 3 flammable liquids be equipped with thermal protection systems that meet or exceed the thermal performance standards outlined in Title 49 Code of Federal Regulations 179.18(a) and are appropriately qualified for the tank car configuration and the commodity transported.	Yes.
R–15–15, Issued April 6, 2015 ..	Require that all new and existing tank cars used to transport all Class 3 flammable liquids be equipped with appropriately sized pressure relief devices that allow the release of pressure under fire conditions to ensure thermal performance that meets or exceeds the requirements of Title 49 Code of Federal Regulations 179.18(a), and that minimizes the likelihood of energetic thermal ruptures.	Yes.
R–15–16, Issued April 6, 2015 ..	Require an aggressive, intermediate progress milestone schedule, such as a 20 percent yearly completion metric over a 5-year implementation period, for the replacement or retrofitting of legacy DOT–111 and CPC–1232 tank cars to appropriate tank car performance standards, that includes equipping these tank cars with jackets, thermal protection, and appropriately sized pressure relief devices.	Partially.
R–15–17, Issued April 6, 2015 ..	Establish a publicly available reporting mechanism that reports at least annually, progress on retrofitting and replacing tank cars subject to thermal protection system performance standards as recommended in safety recommendation R–15–16.	Partially.

* Under R–12–9, NTSB recommends that AAR: Review the design requirements in the AAR Manual of Standards and Recommended Practices C–III, ''Specifications for Tank Cars for Attaching Center Sills or Draft Sills,'' and revise those requirements as needed to ensure that appropriate distances between the welds attaching the draft sill to the reinforcement pads and the welds attaching the reinforcement pads to the tank are maintained in all directions in accidents, including the longitudinal direction. These design requirements have not yet been finalized by the AAR.

** On July 31, 2012, PHMSA published an advisory bulletin in the **Federal Register** to all pipeline operators alerting them to the circumstances of the Cherry Valley derailment and reminding them of the importance of assuring that pipeline facilities have not been damaged either during a railroad accident or other event occurring in the right-of-way. 77 FR 45417. This recommendation was closed by NTSB on September 20, 2012. This action is accessible at the following URL: *http://phmsa.dot.gov/pipeline/regs/ntsb/closed.*

*** On August 1, 2014, PHMSA in consultation with FRA published an ANPRM, 79 FR 45079, which was responsive to these recommendations.

The Department believes this comprehensive rulemaking significantly improves the safety of trains carrying flammable liquids and addresses many on NTSB's rail related recommendations. Following the publication of this rulemaking, PHMSA will issue a formal response to NTSB regarding the recommendations above and how the provisions of this rulemaking address those recommendations.

In addition to the NTSB recommendations above, the Government Accountability Office (GAO), in August 2014, issued a report entitled ''Department of Transportation is Taking Actions to Address Rail Safety, but Additional Actions Are Needed to Improve Pipeline Safety.'' [41] While the primary GAO recommendations of this report were related to pipeline safety, PHMSA and FRA believes this rulemaking addresses rail related issues raised in this report.

VI. Incorporation by Reference Discussion Under 1 CFR Part 51

The American Association of Railroads (AAR) Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars) reference is available for interested parties to purchase in either print or electronic versions through the parent organization Web site. The price charged for this standard helps to cover the cost of developing, maintaining, hosting, and accessing this standard. This specific standard is discussed in greater detail in the following analysis.

VII. Summary and Discussion of Public Comments

In the August 1, 2014, NPRM, PHMSA solicited public comment on whether the potential amendments would enhance safety and clarify the HMR with regard to rail transport as well as the cost and benefit figures associated with these proposals. PHMSA received 3,209 submissions representing more than 181,500 individuals. Comments were received from a broad array of stakeholders, including trade organizations, railroads, intermodal carriers, logistic companies, rail

[41] See *http://www.gao.gov/assets/670/665404.pdf.*

customers, tank car manufacturers, parts suppliers, consultants, law firms, environmental groups, labor organizations, non-government or advocacy organizations, local government organizations or representatives, tribal governments, state governments, Members of Congress, and other interested members of the public. Several organizations attached the views of some of their individual members: Credo Action (71,900 attached comments), Forest Ethics (5,817 attached comments) and Center for Biological Diversity (22,981 attached comments), for example. Other organizations submitted a comment with attached membership signatures, such as: the Sierra Club (61,998 signatures), Forest Ethics petition (8,820 signatures), Public Citizen (3,080 signatures), for example. All comments and corresponding rulemaking materials received may be viewed on the *www.regulations.gov* Web site, docket ID PHMSA–2012–0082.

Many comments received in response to the NPRM are: (1) General statements of support or opposition; (2) personal anecdotes or general statements that do not address a specific aspect of the proposed changes; (3) comments that are beyond the scope or authority of the proposed regulations; or (4) identical or nearly identical letter write-in campaigns sent in response to comment initiatives sponsored by different organizations. The remaining comments reflect a wide variety of views on the merits of particular sections of the proposed regulations. Many include substantive analyses and arguments in support of or in opposition to the proposed regulations. The substantive comments received on the proposed regulations are organized by topic, and discussed in the appropriate section, together with the PHMSA's response to those comments.

TABLE 10—OVERALL COMMENTER BREAKDOWN [42]

Commenter background	Docket IDs	Signatories	Description and example of category
Non-Government Organization	58	171,602	Primarily environmental groups, but includes other Non-Governmental Organizations (NGOs) such as hobby, labor, safety organization, etc.
Individuals	2,695	9,364	Public submissions not directly representing a specific organization.
Industry stakeholders	286	318	Trade organizations, railroads, intermodal carriers, logistic companies, rail customers, tank car manufacturers, parts suppliers, consultants, etc.
Government organizations or representatives.	170	238	Local, state, tribal governments or representatives, NTSB, U.S. Congress members, etc.
Total	3,209	181,522	

Resolution of the comments are discussed within each appropriate section of the final rule (*e.g.* tank car, speed, braking, etc.)

A. Miscellaneous Relevant Comments

1. Harmonization

Almost unanimously, commenters on all sides of the issues stressed the need to introduce harmonized standards for the rail transport of flammable liquids. Rail transport is a cross-border issue. Flammable liquids regularly cross the U.S./Canadian border using an interconnected rail network.[43] It is essential to have a harmonization approach. In addition, as substantial capital investment will be required to retrofit existing cars and manufacture new cars both the U.S. DOT and Transport Canada have worked diligently to ensure our standards are compatible and do not create barriers to movement.

Staff at Transport Canada, PHMSA, and FRA have traditionally interacted on a frequent basis to ensure harmonized efforts. In light of the significant rulemaking efforts underway in the past year in both countries, this interaction has expanded regarding rail safety efforts and the technical aspects of the rulemakings.

In addition to informal staff level discussion, the DOT and Transport Canada have held more formal discussions through the Regulatory Cooperation Council with regard to improvements to rail safety. Further, leadership at both DOT and Transport Canada have met frequently to discuss harmonization efforts. Finally, Secretary Foxx and Transport Minister Lisa Riatt have met on multiple occasions to specifically discuss the topics addressed in this rulemaking.

Conclusion

PHMSA and FRA believe these discussions have led to the development of a harmonized final rulemaking that will not create any barriers to cross border transportation. To the extent possible, the amendments proposed by PHMSA and FRA in this final rule have been harmonized with Canadian regulatory requirements. The table below provides a summary of the areas covered by this rule and corresponding Canadian efforts.

TABLE 11—UNITED STATES AND CANADA HARMONIZED EFFORTS

Issue	U.S. position	Canadian position	Harmonization impacts
Scope	A continuous block of 20 or more tank cars or 35 or more cars dispersed through a train loaded with a flammable liquid.	Tank Car Provisions apply to a single tank car.	Not Harmonized—Due to cost implications in using a risk-based standard of one car.
New Tank Car Specification.	See Table 18 as Canada and U.S. are harmonized fully on this issue.	See Table 18 as Canada and U.S. are harmonized fully on this issue.	Fully Harmonized.

[42] It should be noted that there may be some double-counting as individuals may have submitted comments individually and as signatories to NGO or industry stakeholder comments.

[43] Flammable liquids cross the U.S./Mexican border by rail to a considerably lesser extent than U.S./Canada shipments. Furthermore, the HMR requires all shipments to/from Mexico must be in full conformance with U.S. Regulations.

TABLE 11—UNITED STATES AND CANADA HARMONIZED EFFORTS—Continued

Issue	U.S. position	Canadian position	Harmonization impacts
Existing Tank Car Specification.	See Table 19—Enhanced CPC–1232 ..	See Table 19—Enhanced CPC–1232 ..	Fully Harmonized.
Retrofit Timeline	See Table 21. Requires a retrofitting progress report provided initial milestone is not met.	Except for the first phase of the retrofit schedule Transport Canada and the U.S. have harmonized retrofit schedules and similar retrofit reporting requirements. Transport Canada also includes a retrofitting progress report.	Harmonized except for first phase.
Braking	(1) Requires HHFTs to have in place a functioning two-way EOT device or a DP braking system. (2) Requires any HHFUT transporting at least one PG I flammable liquid be operated with an ECP braking system by January 1, 2021. (3) Requires all other HHFUTs be operated with an ECP braking system by May 1, 2023.	Requires a Two-way End of Train Device (EOT) as per the Railway Freight and Passenger Train Brake Inspection and Safety Rules. A two-way EOT may be a Sense Braking Unit (SBU) or a locomotive functioning as distributive braking power, as per the U.S. definition. Transport Canada will continue to work with Canadian industry in order to determine a harmonized Canadian braking requirement.	Not Currently Harmonized—Transport Canada and the United States will continue to work towards harmonized approach on braking.
Routing	HHFT carriers must perform a routing analysis that considers a minimum of 27 safety and security factors. The carrier must select a route based on findings of the route analysis.	Transport Canada required carriers to complete a risk assessment within six months of the issuance of an emergency directive to assess the risk associated with each ''Key Route'' a ''Key Train'' operates.	Harmonized to the extent needed—While the applicability of the requirements and specifics of the risk analysis on both sides of the border are different, they generally focused on the same types of shipments and cover the same overarching aspects.
Notification	Notification requirements are already included in the routing requirements; therefore a stand-alone provision is unnecessary.	Transport Canada issued a Protective Direction 32 directing rail companies to share information with municipalities to help emergency response planning, risk assessment and first responder training.	Harmonized to the extent needed—While harmonization is not essential on this issue, DOT and Transport Canada are fundamentally aligned on the principles of notification.
Speed	A 50-mph maximum speed restriction for all HHFTs. A 40-mph speed restriction for HHFTs operating in a HTUA unless all flammable liquid tank cars meet the new or retrofitted tank car standards.	Transport Canada issued an Emergency Directive requiring all companies not operate a Key Train at a speed that exceeds 50 mph and not in excess of 40 mph in Census Metropolitan Areas.	Harmonization not essential—This operational issue can be handled separately on either side of the border.
Classification	A classification program for unrefined petroleum-based products.	Transport Canada has adopted a requirements to: (1) Provide a proof of classification, on reasonable notice by the Minister for any dangerous goods; and (2) Classify petroleum crude oil and petroleum products on the basis of sampling and make available to the Minister of Transport, the sampling procedures and conditions of any given shipment.	Harmonized to extent needed—DOT and TC are fully aligned with regard to shipper's certifications. With regard to sampling plans TC is considering adoption of a classification plan similar to DOT.

2. Definition of High-Hazard Flammable Train

In the September 6, 2013, ANPRM we asked several questions regarding AAR Circular No. OT–55–N including if we should incorporate the ''key train'' requirements into the HMR, or if it should be expanded to include trains with fewer than 20 cars. Several commenters indicated that additional operational requirements should be based upon the definition for a ''key train'' as provided by AAR Circular No. OT–55–N. Further, Appendix A to Emergency Order No. 28 mirrors the definition for a ''key train'' as provided by AAR Circular No. OT–55–N.

While Appendix A to Emergency Order No. 28 and the revised definition of a ''key train'' under AAR Circular No. OT–55–N both include Division 2.1 (flammable gas) materials and combustible liquids, PHMSA did not propose to include them in the definition of a ''high-hazard flammable train'' in the August 1, 2014, NPRM. Rather, PHMSA and FRA proposed to define a high-hazard flammable train to mean a single train carrying 20 or more carloads of a Class 3 flammable liquid. PHMSA and FRA asked for specific comment on this definition in the August 1, 2014, NPRM.

In response to the proposed amendments to routing, we received a variety of comments representing differing viewpoints. Specifically, we received comments representing 62,882 signatories regarding the definition of an HHFT. The definition of a ''high-hazard flammable train'' is a critical aspect for this rulemaking as many of the requirements are tied to that threshold. The table below details the types and amounts of commenters on the HHFT definition.

TABLE 12—COMMENTER COMPOSITION: HHFT COMMENTS

Commenter type	Signatories
Non-Government Organization	62,038
Individuals	549
Industry stakeholders	200
Government organizations or representatives	95
Totals	62,882

Below are some examples from commenters that demonstrate the range of opinions on the HHFT definition as it relates specifically to operational controls.[44]

Comments from the concerned public, local government, tribal communities, towns and cities voiced concern with the 20-car threshold, and that the 20-car threshold is an arbitrary number that is not justified in the NPRM. With regard to alternative scopes for this rulemaking, this group of commenters had varied opinions. Some even suggested that a train consisting of one or more tank cars carrying crude oil or any other hazardous material should be classified as an HHFT.

Tribal communities, such as the Quinault Indian Nation and the Prairie Island Indian Community felt the proposed threshold was sufficient but could be even more stringent. Specifically, the Prairie Island Indian Community supported, ''designating trains carrying more than 20 tank cars of flammable liquids as ''high-hazard flammable train (HHFT).'' The Quinault Indian Nation preferred a threshold of a single tank car.

Environmental Groups such as the Sierra Club, Environmental Advocates of New York, Earthjustice, the Natural Resources Defense Council, Forest Keepers, and Oil Change had strong opinions about this threshold and the need to be more stringent. The Sierra Club noted that there are known risks associated with trains transporting less than 20 tank cars loaded with crude oil, particularly in legacy DOT–111 tank cars. The Environmental Advocates of New York suggested eliminating the combustible liquid exception for rail transportation to capture those materials. Finally, a joint comment from Earthjustice, Sierra Club, the Natural Resources Defense Council, Forest Keepers, and Oil Change suggested in addition to lowering the threshold for defining an HHFT, ensuring that diluted bitumen (''dilbit'') is included in any amount towards this definition. Overall environmental groups supported a threshold below 20 tank cars loaded with Class 3 (flammable liquid) materials.

The NTSB suggested using a pre-existing industry standard for route planning, but does not support the use of the 20 tank car threshold for other purposes. Specifically, their proposal was to align the HHFT definition to the OT–55N ''Key Train'' definition (20 tank cars loaded with any combination of hazardous materials) for Routing. With regard to tank car specifications and retrofits, the NTSB supports a single tank car approach.

Industry stakeholders took issue with the term ''high-hazard flammable train'' and the term's connotation. The hazmat shipping industry provided a variety of suggestions with most of them indicating that there would be difficulty in determining if a train would meet the proposed definition of an HHFT prior to shipment. The hazmat shipping industry had issues with the ambiguity of the definition for HHFT. Most in the hazmat shipping industry thought the definition would inadvertently include manifest trains that did not pose as high a risk as unit trains. It was also noted that in many situations it would be difficult to pre-determine when an HHFT would be used. The Dangerous Goods Advisory Council (DGAC) stated that the term ''HHFT'' is not in use within the industry and may be confused with other terminology such as ''unit train,'' ''manifest train,'' or ''key train.'' Proposed definitions from the hazmat shipping industry included:

- Trains consisting of 20 or more tank cars loaded with crude oil or ethanol originating from one consignee to one consignor without intermediate handling.
- A train carrying a continuous block of 20 or more cars of crude oil or ethanol.
- A unit or block train transporting only loaded crude oil and/or ethanol tank cars shipped from a single point of origin to a single destination without being split up or stored en route.

Amongst the rail industry, there was wide agreement that the HHFT definition proposed at the NPRM stage is not a workable definition. The rail industry had issues with the ambiguity of the definition for HHFT. Like the shipping industry, most in the rail industry thought the definition would inadvertently include manifest trains that did not pose as high a risk as unit trains. The rail industry noted that in many situations it would be difficult to pre-determine when an HHFT would be used. There were many comments from the tank car construction and rail industries suggesting the construction of tank cars not be tied to the definition of an HHFT. Specifically, those comments noted the HHFT definition should only be applied to operational requirements. Some claimed this would shift the scope of the requirements to ''unit trains'' as opposed to capturing ''manifest trains.'' Finally, AAR estimated (based on Class I railroads reports) that 20 to 60 percent of their trains containing 20 or more tank cars of flammable liquids are in fact ''manifest trains.'' It was also noted that the emphasis of the NPRM and other voluntary agreements has been on crude oil and ethanol. AAR provided the following suggested definition as a prospective solution: ''20 or more tank cars in block or 35 tank cars across the train consist loaded with a flammable liquid.'' AAR claimed this definition would focus on the unit train risk while eliminating the inadvertent inclusion of manifest trains.

PHMSA and FRA agree with many comments regarding this issue and the need to refine the definition. Therefore, in this final rule, PHMSA and FRA are adopting a revised definition for a high-hazard flammable train. The adopted definition of an HHFT is as follows:

> A *High-Hazard Flammable Train* means a single train transporting 20 or more loaded tank cars containing Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.

This revision is based on further justification of the threshold, the intent of the definition, and operational concerns raised by commenters. Each of these will be discussed further below.

With regard to the inclusion of all hazardous materials as opposed to just flammable liquids in the definition of an HHFT, PHMSA and FRA proposed to limit the definition to Class 3 Flammable liquids in the August 1, 2014, NPRM. Because the NPRM limited the definition to Class 3 Flammable liquids, we feel expanding the definition to include all hazardous materials is beyond the scope of the NPRM and thus we are unable to include all hazardous materials in this final rule. Further, as evidenced with the incidents detailed in the RIA, we believe the risk posed by the bulk shipments of flammable liquids in DOT specification 111 tank cars should be included in this final rule but a similar risk has not currently been identified with other hazardous materials.

PHMSA and FRA did not intend the proposed definition in the NPRM to include lower risk manifest trains and

[44] Other comments/commenters have expressed stances on the HHFT definition as it applies specifically to tank car enhancements that may differ from those discussed in reference to operational controls.

had crafted the definition with the idea of capturing the higher risk associated with bulk shipments. This rulemaking action is focused on the risks associated with large blocks of hazardous materials. Flammable liquids, specifically crude oil and ethanol, are the only type of commodity frequently transported in this configuration. The risk of flammability is compounded in the context of rail transportation because petroleum crude oil and ethanol are commonly shipped in large blocks or single commodity trains (unit trains). In recent years, train accidents/incidents (train accidents) involving a flammable liquid release and resulting fire with severe consequences have occurred with increasing frequency (*i.e.,* Arcadia, OH; Plevna, MT; Casselton, ND; Aliceville, AL; Lac-Mégantic, Quebec; Lynchburg, VA, Tiskilwa, IL, Columbus, OH, New Brighton, PA, Mount Carbon, WV, Galena, IL, Dubuque, IA, Timmins, Ontario, and Gogama, Ontario).[45] As we were focused on this particular type of risk, we will continue in this final rulemaking to limit our focus to Class 3 Flammable Liquids.

One commenter suggested the 20-car threshold was arbitrary and not founded on data. As detailed in the August 1, 2014, NPRM the 20-car threshold was derived from the ''key train'' requirements contained in AAR Circular No. OT–55–N. The proposed definition in the August 1, 2014, NPRM used the key train definition as a starting point because it is a threshold used in existing railroad practices, and served as a means to separate the higher-risk trains that carry large volumes of flammable liquids. In response to comments from both the September 6, 2013, ANPRM and the August 1, 2014, NPRM the definition has been revised to focus on the specific risks which are the topic of this final rule. Commenters also suggested the revised threshold being adopted in this rulemaking, as it would eliminate the inclusion of most manifest trains and focus on unit trains.

Based on FRA modeling and analysis, 20 tank cars in a continuous block loaded with a flammable liquid and 35 tank cars loaded with a flammable liquid dispersed throughout a train display consistent characteristics as to the number of tank cars likely to be breached in a derailment. The operating railroads commented that this threshold would exclude manifest trains and focus on higher risk unit trains. FRA completed an analysis of a hypothetical train set consisting of 100 cars. The analysis assumes 20 cars derailed. The highest probable number of cars losing containment in a derailment involving a train with a 20-car block (loaded with flammable liquid) located immediately after the locomotive and buffer cars would be 2.78 cars. In addition, the most probable number of cars losing containment in a derailment involving a manifest train consisting of 35 cars containing flammable liquids spread throughout the train would be 2.59 cars. Therefore, 20 tank cars in a block and 35 tank cars or more spread throughout a train display consistent characteristics. If the number of flammable liquid cars in a manifest train were increased from 40 or 45, the most likely number of cars losing containment would be 3.12 and 3.46 cars, respectively. This serves as one basis for the selection of the revised HHFT definition.

Many commenters highlighted the potential for logistical issues when dealing with the proposed definition. Many called it unworkable and ambiguous. PHMSA and FRA have resolved the ambiguity in the definition by further clarifying the types of trains to be included. Furthermore, AAR, who represents the Class 1 railroads in the U.S., provided the basis for the revised definition. AAR suggested this definition would ''exclude manifest trains and focus on higher risk unit trains.'' Many commenters suggested that we apply the requirements of this rulemaking to a single tank car for simplicity. PHMSA and FRA are not doing so for numerous reasons. First, this revision would include single tank car shipments of flammable liquids which could have a significant impact on small entities that do not transport large amounts of flammable liquids. Second, while we acknowledge applying the requirements to a single tank car may resolve some logistical issues, such a solution would not be cost justified given the number of tank cars affected and the associated risk with manifest trains verses the risk of an HHFT. Third, we feel through fleet management the rail industry will be able to determine the need for cars that will be part of an HHFT. This could potentially limit the number of retrofitted cars. Lastly, as the definition of an HHFT in the August 1, 2014, NPRM specifically provided a 20-car threshold we feel it would be beyond the scope of this rulemaking to change the applicability of the requirements so drastically without notice and comment.

Conclusion

Therefore, based on the above justification, PHMSA and FRA are adding a definition for high-hazard flammable trains in § 171.8. Specifically a *High-Hazard Flammable Train* will be defined as a continuous block of 20 or more tank cars or 35 or more cars dispersed through a train loaded with a flammable liquid. This definition will serve as the applicable threshold of many of the requirements in this rulemaking.

3. Crude Oil Treatment

In the NPRM, 79 FR 45062 PHMSA asked whether exceptions for combustible liquids or PG III flammable liquids would incentivize producers to reduce the volatility of crude oil, and what the impacts on costs and safety benefits for degasifying to these levels. The majority of commenters from all backgrounds provided general support for pre-treatment of crude oil prior to transportation. For example, Quantum Energy supported pre-treatment, but stated that the current exceptions for combustible liquids (see § 172.102 Special provisions B1) are not sufficient to incentivize pre-treatment of petroleum crude oil. It further suggested adding a definition for ''stabilized crude oil'' and providing several exceptions for ''stabilized crude oil'' throughout the rule.

Some industry stakeholders did not support incentivizing pre-treatment of crude oil. AFPM provided results from a survey of its members on data regarding the characteristics of Bakken crude and cited other studies on the stabilization of crude oil. It stated that the treatment process used in the Bakken region is unlikely to result in Bakken crude's reclassification as a combustible liquid. AFPM stated treated crude should not be regulated differently than non-treated crude because, ''[o]nce ignited, the burning intensity of unstabilized and stabilized crude would not substantially differ.''

Commenters also expressed differing views on the role of packing group-based exceptions. Some commenters suggested more stringent packing group-based requirements, such as restricting use of PG III for crude oil. Other commenters recommended various packing group-based exceptions not proposed in the rulemaking.

Conclusion

As with any hazardous material put into transportation by any mode, safety is the Department's top priority, and we will continue to conduct inspections or bring enforcement actions to assure that

[45] Please note that the last five accidents listed occurred in 2015 are not included in our supporting analysis for this rulemaking as the information from those incidents is preliminary and not finalized.

shippers comply with their responsibilities to properly characterize, classify, and package crude oil regardless of how it is treated prior to transport. We also continue to work with various stakeholders to understand best practices for testing and classifying crude oil. For further discussion on Crude Oil treatment see ''E. Classification'' section of this document.

4. Scope of Rulemaking

Some commenters requested the proposals in the NPRM to be expanded beyond just flammable liquids to include all hazardous materials. This request covered all topics in the rulemaking. The operational controls addressed in this rule are aimed at reducing the risk and consequences of incidents involving rail shipments of Class 3 flammable liquids. The analyses, data, and relevant factors considered in developing this rule are specific to these materials. Information has not been provided to support expanding these restrictions to all hazardous materials or to justify the associated negative impacts on rail fluidity and costs.

B. Tank Car Specification

Below is a discussion of the amendments relating to tank car construction and retrofitting. This topic is broken down into four areas: new tank car construction, retrofit standard, performance standard, and an implementation timeline.

1. New Tank Car Construction

In the September 6, 2013 ANPRM, PHMSA requested comments pertaining to new construction requirements for DOT Specification 111 (DOT–111) tank cars used in flammable liquid service. See 78 FR 54849. On August 1, 2014, PHMSA, in consultation with FRA, issued an NPRM in response to comments submitted to the ANPRM. See 79 FR 45015. In the NPRM, we proposed three options for newly manufactured tank cars that would address the risks associated with the rail transportation of Class 3 flammable liquids in HHFTs. Though commenters differed on the applicability of new construction requirements for the rail transportation of Class 3 flammable liquids, all support prompt action to address construction standards for tank cars.

Tank cars built to the new standards as adopted in this final rule will be designated ''DOT Specification 117'' (DOT–117). In addition, we are adopting a performance standard compliance alternative for the design and construction of new tank cars or retrofitting of existing tank cars equivalent to the prescribed DOT Specification 117 standards. Thus, a new or retrofitted tank car meeting the performance criteria will be designated as ''DOT Specification 117P'' (See ''Performance Standard'' section). In addition, we are adopting a retrofit standard for existing tank cars meeting the DOT Specification 111 or CPC–1232 standard. Thus, a tank car meeting the retrofit standard will be designated as ''DOT Specification 117R'' (See ''Retrofit Standard'' section). In this final rule, we are adopting the requirement that new tank cars constructed after October 1, 2015, used to transport Class 3 flammable liquids in an HHFT, meet either the prescriptive standards for the DOT Specification 117 tank car or the performance standards for the DOT Specification 117P tank car. Other authorized tank car specifications, as specified in part 173, subpart F, will also be permitted; however, use of a DOT specification 111 tank car in an HHFT is prohibited.

The prescribed specifications and the performance standards adopted in this rule were developed to provide improved crashworthiness when compared to the legacy DOT Specification 111 tank car. In addition to adopting revisions to part 179 of the HMR to include the new DOT Specification 117, 117P and 117R tank car standards, we are adopting revisions to the bulk packaging authorizations in §§ 173.241, 173.242, and 173.243 to include the DOT Specification 117, 117P, and 117R tank cars as an authorized packaging for those hazardous materials. We noted that, as stated in the introductory text to §§ 173.241, 173.242, and 173.243, each person selecting a packaging must also consider the requirements of subparts A and B of part 173 of the HMR and any special provisions indicated in column (7) of the HMT.

Lastly, we are incorporating by reference, in § 171.7, appendix E 10.2.1 of the 2010 version of the AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars). Appendix E provides requirements for top fittings protection for certain tank car options.

Replacing the current standard for the DOT Specification 111 tank car is not a decision that the Department takes lightly. New construction and retrofit standards will have considerable safety and economic consequences. Consequently, the DOT Specification 117 tank car would be phased in over an aggressive but realistic timeline. We limit our discussion to new tank car standards in this section, but we will separately discuss the retrofit standard, performance standard and implementation timeline in the subsequent sections. We seek to ensure that the car selected will have the greatest net social benefits, with benefits primarily generated from the mitigation of accident severity. We are also aware of, and account for, the large economic effects associated with regulatory changes of this scale, as tank cars are a long-term investment. For these reasons, we proposed in the NPRM three separate DOT Specification 117 options and requested comments on each of them.

The options proposed in the NPRM were designed to enhance the survivability of the tank car and to mitigate the damages of rail accidents with design features. Specifically, the tank car options incorporate several enhancements to increase tank head and shell puncture resistance; thermal protection to extend lading containment while in a pool fire environment; and improved top fitting and bottom outlet protection during a derailment. Under all options, the proposed system of design enhancements will reduce the consequences of a derailment of tank cars transporting flammable liquids in an HHFT. There will be fewer tank car punctures, fewer releases from service equipment (top and bottom fittings), and improved containment of flammable liquid from the tank cars through the use of pressure relief devices and thermal protection systems. The following table summarizes the tank car options proposed in the August 1, 2014, NPRM. Please note the shaded cells in the following table indicate design traits that are the same for more than one proposed option.

Table 13: Safety Features by Tank Car Options Proposed in the NPRM

Tank Car	Bottom Outlet Handle	GRL (lbs.)	Head Shield Type	Pressure Relief Valve	Shell Thickness	Jacket	Tank Material*	Top Fittings Protection **	Thermal Protection System	Braking
Option 1: PHMSA and FRA Designed Tank Car	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident	286k	Full-height, 1/2 inch thick head shield	Reclosing pressure relief device	9/16-inch minimum	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight	TC-128 Grade B, normalized steel	TIH Top fittings protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 mph	Thermal protection system in accordance with § 179.18	ECP brakes
Option 2: AAR 2014 Tank Car	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident	286k	Full-height, 1/2 inch thick head shield	Reclosing pressure relief device	9/16-inch minimum	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight	TC-128 Grade B, normalized steel	Equipped per AAR Specifications for Tank Cars, Appendix E paragraph 10.2.1	Thermal protection system in accordance with § 179.18	DP or Two-way EOT devices
Option 3: Enhanced CPC-1232 Tank Car	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident	286k	Full height 1/2 inch thick head shield	Reclosing pressure relief device	7/16-inch-minimum	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight	TC-128 Grade B, normalized steel	Equipped per AAR Specifications for Tank Cars, Appendix E paragraph 10.2.1	Thermal protection system in accordance with § 179.18	DP or Two-way EOT devices
DOT 111A100W1 Specification (Currently Authorized)	Bottom outlets are optional	263K	Optional; bare tanks half height; jacket tanks full height	Reclosing pressure relief valve	7/16-inch-minimum	Jackets are optional	TC-128 Grade B, normalized steel*	Not required, but when equipped per AAR Specifications for Tank Cars, Appendix E paragraph 10.2.1	Optional	EOT device (See 49 CFR part 232)

* For the purposes of this figure, TC-128 Grade B normalized steel is used to provide a consistent comparison to the proposed options. Section 179.200-7 provides alternative materials which are authorized for the DOT Specification 111.

** Please note that the PHMSA did not propose to require additional top fittings protection for retrofits

In support of this final action, PHMSA and FRA have revised the analysis to account for public comments and further research. The revisions resulted in modified effectiveness rates which can be viewed in the final RIA for this rulemaking, which has been placed into the docket. The final RIA also describes the baseline accidents, model inputs, and the assumptions that were used to develop the effectiveness rates for each tank car option.

Based on the aforementioned, in this final rule, PHMSA and FRA are adopting Option 2 for new construction of tank cars used in a HHFT subject to the enhanced braking requirements addressed in the ''Advanced Brake Propagation Systems'' section of this rulemaking. The following table lists the design features of the adopted DOT Specification 117 Tank Car:

TABLE 14—ADOPTED DOT–117 SPECIFICATION TANK CAR

Tank car feature	Description
Capacity	286,000 lbs. GRL tank car that is designed and constructed in accordance with AAR Standard S286.
Thickness	Wall thickness after forming of the tank shell and heads must be a minimum of 9/16 inch constructed from TC–128 Grade B, normalized steel.

TABLE 14—ADOPTED DOT–117 SPECIFICATION TANK CAR—Continued

Tank car feature	Description
Thermal Protection	Thermal protection system in accordance with § 179.18, including a reclosing pressure relief device in accordance with § 173.31(b)(2).
Jacketing	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight as required in § 179.200–4.
Head Shield	Full-height, ½-inch thick head shield meeting the requirements of § 179.16(c)(1).
Bottom outlet	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.
Braking	Braking systems determined by operational conditions, see ''Advanced Brake Signal Propagation System'' section.
Top fittings	Top fittings protection in accordance with AAR Specifications Tank Cars, appendix E paragraph 10.2.1. The adopted option excludes the TIH Top fittings protection system.

In response to tank car-related proposals in the NPRM, we received comments representing many differing viewpoints. In sum, we received comments representing approximately 172,000 signatories.

TABLE 15—COMMENTER COMPOSITION: TANK CAR CONSTRUCTION COMMENTS

Commenter type	Signatories
Non-Government Organization	162,776
Individuals	9,004
Industry stakeholders	119
Government organizations or representatives	140
Totals	172,039

Overall, the vast majority of commenters support PHMSA's efforts to adopt enhanced standards for non-pressure tank cars used to transport flammable liquids. For example, there were nearly 168,700 signatories from the general public, NGOs, and government organizations who requested that PHMSA prohibit the continued use of the existing legacy DOT Specification 111 tank car fleets. There were, however, 1,878 signatories that supported the proposals in the rulemaking. Moreover, there were approximately 159,000 signatories that felt the proposed new tank car standards do not go far enough, including three entities representing tribal communities, the Tulalip Tribes, the Prairie Island Indian Community, and the Quinault Indian Nation. Lastly, there were approximately 40 substantive comments in support of the notion that alignment with Canada is critical for new construction and retrofit designs, as well as retrofit timelines. Below, we discuss the comments specific to each tank car option proposed in the NPRM.

Option 1

Proposed tank car Option 1 received the least support from the regulated industry (railroads, shippers, offerors, etc.) however it was fully supported by the NTSB, concerned public, environmental groups, local communities, and cities. These groups all requested the most robust tank car specifications be adopted but gave very little consideration to the costs of such standards.

Option 1 is the most robust design proposed; it also is the most costly. The comments of API, Railway Supply Institute Committee on Tank Cars (RSI–CTC), and many others in the rail and shipping industry, do not support Option 1. U.S. Congressman Kurt Schrader echoed many of these commenters concerns when he stated that, ''Option 1 appears to introduce controversy, complexity, and additional expense without any meaningful increase in safety.'' In his comments, U.S. Congressmen Peter DeFazio stated ''. . . the rail industry has major concerns with the viability and effectiveness of ECP brakes and certain roll-over protections that were included in Option l. If the addition of those protections appears likely to significantly delay the rulemaking, I would encourage PHMSA to move forward with Option 2 . . .''

While Option 1 was the most robust tank car proposed in the August 1, 2014, NPRM, the Tulalip Tribes did not believe the design was robust enough. Specifically, the Tulalip Tribes noted that while, ''proposed new standards for rail car designs are an improvement,'' they are ''far from providing an acceptable risk from tank rupture allowing leakage or an explosion.'' The Tulalip Tribes continued stating that the:

> DOT–111 tanks are only safe from collisions for speeds up to 9 miles per hour. Option one only improves the safe speed for collisions up to 12.3 miles per hour for the shell of the tank. Of the thirteen major crude oil/ethanol train accidents in the U.S. listed in the August 1, 2014 **Federal Register** notice that this letter is in response to, the proposed new tank car standard would have only prevented one of them from spilling contents from a damaged rail car. The rest of the accidents were from trains travelling from 23 to 48 miles per hour, well above the safe speeds for the new proposed tank designs.''

The Tulalip Tribes concluded that ''[t]he rail cars need to be designed in a way that the damages caused by a derailment are minimized and speed limits are set at or below the maximum speed that a tanker car can survive without a spill.

In general terms, the arguments against Option 1 typically noted the overall cost of the tank car, weight issues associated with increased safety features, the lack of a substantial increase in safety when compared to other options, and the inclusion of ECP braking and TIH top fittings protection. The typical arguments in support of Option 1 were that it was the most robust tank car option, and the incremental safety benefit is justified given recent accident history.

Option 2

The Option 2 tank car has most of the safety features as the Option 1 tank car, including the same increase in shell thickness, jacket requirement, thermal protection requirement, and head shield requirement. However, it does not require TIH top fittings protection and the requirement of ECP brake equipment of Option 1. Installation of ECP brake equipment largely makes up the cost differential between the Option 1 and 2 tank cars, and the differences in estimated effectiveness are also largely a result of ECP brakes. Proposed tank car Option 2 received more support than option 1 from the regulated industry, albeit with a variation in shell and head thickness for newly constructed tank cars. Many commenters in the rail industry supported this option with an 8/16-inch thick shell as opposed to the proposed 9/16-inch shell.

In their comments, U.S. Congressman Dave Reichert and Congresswoman Lynn Jenkins state ''we strongly encourage PHMSA to consider Option 2 identified in the NPRM.'' Another commenter, Bridger, LLC (Bridger) stated ''Bridger strongly recommends

that PHMSA promulgate a final rule adopting the Option 2 or the Option 3 tank car design.'' GBW Railcar, a railcar manufacturer, asserted ''that PHMSA adopt Option 2 as the standard for the new tank cars.''

Amsted Rail Company, Inc. (Amsted Rail) fully supports Option 2 as does the State of Minnesota which stated that ''Minnesota and its agencies support the safety features and performance level represented by the Option 2.'' RSI–CTC also supports Option 2 for new tank car requirements but only for those tank cars transporting crude oil and ethanol.

Many commenters were opposed to both Options 1 and 2. AFPM represented many of these sentiments when it stated that, ''numerous procedural and substantive flaws of PHMSA's cost-benefit analysis make it clear that Options 1 and 2 would cost far more and provide little in the way of additional safety improvements.''

The arguments against Option 2 were primarily from the NTSB, concerned public, environmental groups, local communities, cities, and towns who, as stated above, supported Option 1. In addition some in the regulated industry expressed their opposition for both options 1 and 2. These entities typically noted the overall cost of the tank car, weight issues associated with increased safety features, and the lack of a substantial increase in safety when compared to other options.

In summary, the arguments in support of Option 2 were provided by a wide range of commenters from the regulated industry. These commenters supported exclusion of ECP braking and TIH top fittings protection. Finally, it should be stressed that many in the regulated industry supported this option with the caveat that the shell thickness be 8/16-inch and not 9/16-inch.

Option 3

Proposed tank car Option 3 received the most support from the regulated industry for both new construction and retrofitted tank car requirements and the least support from the NTSB, concerned public, environmental groups, local communities, and cities. Option 3 is similar to the jacketed CPC–1232 tank car standard. The option revises the CPC–1232 standards by requiring improvements to the bottom outlet handle and pressure relief valve. It also removes options (1) to build a tank car with the alternative (ASTM A516–70) steel type but with added shell thickness or (2) to build a tank car with a thicker shell but no jacket.

This tank car is a substantial safety improvement over the current DOT Specification 111 but does not achieve the same level of safety as the Option 1 or Option 2 tank cars. This tank car requirement calls for a 7/16-inch shell, which is thinner than Option 1 or Option 2 tank cars. Similar to the Option 2 tank car, this tank car lacks TIH top fittings protection and ECP brake equipment. This standard is the tank car configuration PHMSA believes will be built for HHFT service in absence of regulation, based on commitments from one of the largest rail car manufacturers/leasers—Greenbrier, Inc. and the Railway Supply Institute (consisting of the majority of the tank car manufacturing industry).[46] Accordingly, PHMSA assumes no costs or benefits from Option 3 for new tank cars. Below are a few selected comments that represent the larger overall support from the regulated industry.

In its comments, Honeywell Performance Materials and Technologies asserted, ''[n]ew car construction, as proposed with CPC–1232, is the most efficient way to enhance safety of the fleet.''

The Dow Chemical Company (Dow) stated that ''Dow believes that Option 3 will be the most feasible for the crude oil and ethanol industries . . .'' Dow estimated ''that Option 3 will achieve a more optimal balance between safety features (resulting in increased tare weight) and lading quantity, thus reducing the extra number of cars (or trains) that would need to be put on the rails compared to Options 1 and 2. The size of the Option 3 car also makes it less likely to negatively affect loading/unloading rack dimensions or fall protection systems.'' Further, Dow ''strongly encourages PHMSA to incorporate into the HMR enhanced specifications—as described in CPC–1232—for new DOT Specification 111 builds for Class 3 materials (other than those covered by HM–251).''

U.S. Congressman Rep. Kevin Cramer supports the CPC–1232 standard because the analysis leading to its design has been ''fully contemplated.''

In its comments, DGAC stated that it ''encourages Option #3 (Enhanced CPC–1232) with jacket and full height headshield.'' The Independent Fuel Terminal Operators Association also supports the adoption of Option 3, but only for newly constructed cars built after October 1, 2015. Biggs Appraisal Service LLC offers mixed support for new tank car requirements. It believes this is the option that best fits their interest, but this option still has features that it thinks is unnecessary. It argues that 7/16″ is sufficient thickness and that ''the amount of thickness strength that an additional 1/16 of an inch will afford is negligible.''

As mentioned previously, some commenters proposed an alternative tank car that would fall somewhere between the proposed Options 2 and 3. Specifically, in their comments, AAR/API and Hess propose a new tank car design standard with an 8/16-inch shell; jacket; insulation; full-height head shields; low pressure actuation/high flow pressure relief device; bottom valve operating handle modification; and top fittings protection. In their recommendations, they state, ''[t]he Hess and AAR/API recommendation reflects a joint oil and rail industry agreement that balances the enhanced safety from increasing shell thickness against the risk that additional carloads will be required to move the same volume of product due to a decrease in useable tank car capacity (maximum weight constraint).''

Hess continues its support for Option 3 with a thicker shell, stating:

The AAR/API endorsed standard mirrors PHMSA's Options 2 and 3 in all respects, except that the design would require an 8/16-inch minimum shell thickness, instead of a 9/16-inch shell (Option 2) or a 7/16-inch (Option 3) shell. Adopting this standard improves upon the 7/16-inch minimum shell in Option 3 by reducing the likelihood of a release in the event of an incident. At the same time, it balances the extra protection from the additional steel with the associated reduction in tank car capacity due to the increased car weight. Tank car weight and capacity limitations are a concern with both of PHMSA's 9/16-inch car proposals.

In opposition, Greenbrier does not support Option 3 and it noted a fear of having to again revisit this issue in the future if the correct tank car is not selected. Further, the NTSB asserted that the 7/16-inch″ shell and head thickness is too thin.

In summary, the arguments against Option 3 were primarily from the NTSB, concerned public, environmental groups, local communities, cities, and towns and a rail car manufacturer. These arguments were primarily based on the desire to choose the most effective tank car that has the largest increase in benefit over the existing fleet. In addition, these commenters noted the need to adopt the most appropriate tank car now and avoid revisiting the issue in the future. The arguments in support of Option 3 were more widespread amongst the regulated industry. This support was primarily due to the concerns of the weight of tank car, and the lack of the inclusion of ECP braking and TIH top fittings

[46] Greenbrier: *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0155* RSI: *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0156*

protection. Many in the regulated industry supported this option with the caveat that the shell thickness should be 8⁄16-inch rather than 9⁄16-inch. Lastly, the regulated community consistently supported either Options 2 or 3.

Tank Car Component Comments

To address comments more effectively, we have arranged our discussion by tank car component. The following is an overview of the requirements and a discussion of the comments in support and opposed to certain proposed requirements.

Bottom Outlet Valve Protection

The bottom outlet valve (BOV) protection ensures that the BOV does not open during a train accident. The NTSB in recommendation R–12–6 recommends that PHMSA ''require all bottom outlet valves used on newly manufactured and existing non-pressure tank cars are designed to remain closed during accidents in which the valve and operating handle are subjected to impact forces.'' PHMSA and FRA see this issue as one that can be cost-effectively resolved and in general commenters agreed.

Overall the comments with regard to BOV protection were supportive by both the regulated industry and public stakeholders. For example, Earthjustice, the environmental group, stated that it, ''urge[s] PHMSA to take further steps to reduce the risks posed by bottom outlet valves.'' The regulated industry also supports this proposal as is evident in Growth Energy's comment that it, ''support[s] CPC–1232 design with PRD and BOV protection.'' Further, R.L. Banks & Associates, Inc. (RLBA) also supports the requirement to develop better lower product discharge valves and valve protectors and would like to see the development of a performance-based specification for lower discharge openings to ensure that the system meets minimum desired requirements.

Although there was widespread support, some commenters were opposed to BOV improvements. Dow stated that, ''in trying to optimize the bottom outlet valve (BOV) for derailments causing the BOV to open, which is a somewhat rare occurrence in terms of total number of derailments, design features that make the valve less safe for loading/unloading operations have the potential to be introduced . . . we believe it is premature to mandate such BOV enhancements.'' This was generally the minority opinion as most support changes to the BOV.

PHMSA and FRA disagree with those commenters who oppose improvements to the current BOV designs. Protection of the BOV is currently a regulatory requirement and is invaluable in an accident scenario as it limits the likelihood of a release of lading which could potentially result in a pool fire. A BOV designed to prevent actuation or opening in a derailment is a necessary enhancement. In this final rule, PHMSA is requiring other design enhancements—such as improved puncture resistance and top fittings protection—that will reduce the volume of lading loss from a tank car that is involved in a derailment. Preventing opening of the BOV during a derailment will further reduce the volume lost, thereby mitigating environmental damage as well as the likelihood of a pool fire or the severity of the fire and environmental damage. We note that an AAR task force has been convened to develop a BOV design that would prevent opening during a derailment. We believe that if a car owner and/or offeror chooses not to remove the handle for transportation, an easy to install design will soon be readily available at a low cost. Therefore, in this final rule, for new construction of the DOT–117 tank car, we are adopting as proposed in the NPRM that all bottom outlet handles either be removed or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

Head Shields

Currently, the HMR do not require head shields on tank cars used to transport Class 3 flammable liquids. Further, the CPC–1232 standard currently in effect only requires half-height head shields for newly constructed non-jacketed tank cars. In the August 1, 2014 NPRM, PHMSA and FRA proposed a range of tank car options, each of which included a full-height, ½-inch thick head shield.

Commenters who addressed the issue in their comments overwhelmingly support full-height head shield on jacketed tank cars subject to the new standard. For example, the NTSB noted in its comments, ''[t]he top half of tank car heads are subject to damage and punctures during train derailments and half height head shields fail to provide the protection needed.'' RLBA supports the use of full-height head shields for the heads. A concerned public individual, William A. Brake, urged that the new standard require tank cars to be ''equipped with ½ full-head shields.''

PHMSA and FRA agree with the commenters who support the inclusion of a ½ inch full-head shields on new constructions of DOT–117 tank cars. A full-height head shield protects the entire tank car head and can decrease the likelihood of a puncture at the top half of a tank car should a train derail. In fact, half of all the punctures that occurred in the derailments considered in this rulemaking occurred in the head of the tank. Further, half of the head punctures occurred in the top half of the head. As the Transportation Safety Board (TSB) of Canada noted in its' report on the Lac-Mégantic accident ''a full-head shield would have been beneficial, as half-head shields protect only the bottom portion of the head.'' TSB continued that ''all but 4 of the 63 derailed cars exhibited some form of impact damage (for example, denting or breach) in the top portion of at least one head'' and about ''half of the tank cars (31) released product due to damage to the tank car head.'' [47] This report gives further credence to the importance of a ½ inch full-head shield. Given the overwhelming support, we are adopting in this final rule the proposal that all DOT Specification 117 tank cars must include a one-half inch thick, full-height head shield on new construction.

Thermal Protection Systems/Pressure Relief Device

Pressure relief devices (PRD) vent gases or vapors under high pressure in order to reduce the risk of a ruptured tank car. The HMR limit the allowable start-to-discharge (STD) pressure of the PRD to approximately one-third of the burst pressure to provide a factor of safety against at tank rupture. In a pool fire, a loaded tank is exposed to extreme heat which results in both an increase in tank pressure as the lading is heated and a reduction in strength of the tank material commensurate with the increasing material temperature. When a tank car is exposed to a pool fire the PRD will maintain a low pressure in the tank and potentially extend the time before a tank car would thermally rupture.

In the Arcadia derailment there were three high-energy thermal failures. In two of the three cases the tank fractured into two pieces and those pieces were thrown from the derailment area. In the third case, the tank was nearly fractured around the entire circumference. The AAR T87.6 task force considered the possibility that the PRDs did not have adequate flow capacity to expel the rapidly increasing pressure and start to discharge pressure rating (STD). Currently, the PRDs on tank car used in Class 3 service have a STD pressure of 75 or 165 psi. The PRD maintains the

[47] Railway Investigation Report R13D0054 *http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054.asp.*

internal pressure at or below the STD pressure. When a tank bursts as a result of exposure to fire conditions, the lower the STD pressure, and therefore internal pressure, the less energetic the failure will be. The PRD in combination with the thermal protection system will provide the appropriate sized pressure relief valve and enhance the lading containment of the tank car.

A thermal protection system serves to prolong the survivability of a tank exposed to a pool or torch fire by limiting the heat flux into the tank and its lading, thereby delaying the increase in pressure in the tank exceeding the STD pressure of the PRD. If a PRD on a tank car exposed to a pool fire is under the liquid level of the tank, the thermal protection system will delay the release of the lading through the PRD. Based on the results of simulations using the Affect of Fire on Tank Cars (AFFTAC) model, an approved thermal protection delays rupture of a tank until most of the lading has been expelled through the PRD. This results in a lower energy available at the time of rupture.

Most commenters support a redesigned PRD because they consider it as a cost-effective solution that provides considerable safety benefit. Some commenters argue that for a CPC–1232 compliant tank car, any new requirements should be limited to a redesigned PRD and bottom outlet valve protection only. Eighty-Eight Oil LLC stated in its comments, ''Eighty-Eight supports allowing the CPC–1232 jacketed fleet to operate for its full useful life with a potential retrofit limited to an enhanced BOV handle and a larger pressure relief valve.'' Further, in their comments, Growth Energy and many others support the CPC–1232 design with PRD and BOV protection.

There are currently high flow capacity, reclosing PRD available that are relatively low cost and generally easy to install on new or retrofitted tank cars. Based on these facts and comments received in support of reclosing PRDs, PHMSA is adopting the installation of reclosing PRD as proposed on new construction of DOT–117 specification tank cars.

Thermal protection is intended to limit the heat flux into the lading when exposed to fire. Thermal protection will extend the tank car lading retention for a certain period of time in pool fire conditions. Thermal protection will prevent rapid temperature increase of the lading and a commensurate increase in vapor pressure in the tank. The thermal protection system, by reducing the heat flow rate from the fire to the liquid, lowers the liquid evaporation rate, allows the evaporated vapor to be discharged through the pressure relieve valve without significant tank pressure increase and considerably reduces the possibility of dangerous over pressurization of the tank.

All three DOT Specification 117 options proposed in the NPRM required a thermal protection system sufficient to meet the performance standard of § 179.18 of the HMR, and must include a reclosing pressure release valve. Section 179.18 requires that a thermal protection system be capable of preventing the release of any lading within the tank car, except release through the pressure release device, when subjected to a pool fire for 100 minutes and a torch fire for 30 minutes. Typically, tank cars with thermal protection are equipped with a weather-tight 11-gauge jacket. There was general support for this requirement as there are existing technologies that can vastly improve the thermal survivability of the existing fleet. We have summarized a few selected comments below to provide some idea of the overall comments.

In its comments, RLBA agrees that thermal insulation around the shell and a steel jacket over the thermal insulation will be highly beneficial in protecting the shell from structural thermal damage during a derailment fire and over pressure damage due to cargo expansion thanks to shell heating.

While many commenters echoed the above comments, some commenters such as PBF Energy and the Renewable Fuels Association (RFA) do not think jacketing is necessary. In its opposition, DGAC ''believes that an across-the-board requirement for thermal protection and jacketing on all flammable liquid tank cars is not supported by incident data, and may also have unintended consequences detrimental to safety . . . such as making corrosion under the insulation more difficult to detect.''

PHMSA and FRA disagree with commenters opposing the thermal protection requirements as proposed in the NPRM. Furthermore, on April 6, 2015 NTSB issued emergency recommendations stressing the importance of thermal protection in light of the Mount Carbon, WV and Galena, IL derailments. In the train accidents previously discussed, approximately 10 percent of tank car breaches were attributed to exposure to fire conditions. Consistent with current minimum industry standards and Federal regulations for pressure cars for Class 2 materials, the T87.6 Task Force agreed that a survivability time of 100-minutes in a pool fire should be used as a benchmark for adequate performance. The 100-minute survival time is the existing performance standard for pressure tank cars equipped with a thermal protection system and was established to provide emergency responders with adequate time to assess a derailment, establish perimeters, and evacuate the public as needed, while also giving time to vent the hazardous material from the tank and prevent an energetic failure of the tank car.

With regard to the claim that addition of thermal protection and a jacket could have ''unintended consequences detrimental to safety . . . such as making corrosion under the insulation more difficult to detect'' PHMSA and FRA disagree. In accordance with the current requirements, the owner of the tank car has to develop a requalification program. This program would include an inspection method to check for corrosion to the tank. This is currently done for jacketed and insulated tank cars.

The thermal protection prolongs the survivability of the tank by delaying the moment when pressure in the tank exceeds the start to discharge of the pressure relief valve, thus delaying the release of flammable liquid or the occurrence of an energetic rupture. Because all the thermal protection systems meeting the § 179.18 performance standard that PHMSA studied performed equally well in the simulations, and because the simulations indicated the importance of a reclosing pressure relief valve, PHMSA is not requiring a particular system, but instead is requiring that a thermal protection system meet the performance standard of § 179.18 and include a reclosing PRD for new construction of the DOT–117 specification tank car. Finally, it was consistently noted that there are existing technologies available that can vastly improve the thermal survivability of the existing fleet. Thus, the thermal protection requirements for new construction of the DOT–117 specification tank car as proposed in the NPRM are adopted in this final rule.

Head and Shell Thickness

Shell and head punctures result in rapid and often complete loss of tank contents. Minimizing the number of cars punctured in a derailment is critical because ignited flammable liquids that result in a pool fire that can quickly affect the integrity of adjacent cars and their ability to contain their lading. In the August 1, 2014 NPRM, PHMSA and FRA proposed a range of head and shell thicknesses ranging from 7/16-inch to 9/16-inch. Many commenters opposed the thicker steel but were willing to

compromise by recommending an 8/16-inch shell thickness. More information regarding the relationship between puncture resistance and shell thickness is discussed in a subsequent section. Below are a few selected comments related to the topic.

The NTSB, in support of a thicker shell commented that:

> The minimum standards for new DOT–117 tank cars should include: full height ½-inch thick head shields; thermal protection; minimum 11-gauge jacket constructed from A1011 steel or equivalent and weather tight; reclosing and properly sized pressure relief valves; top fitting rollover protection equivalent to pressure tank car performance; 9/16-inch minimum shell thickness TC–128 Grade B normalized steel or steel with minimum equivalent performance standards; and enhanced bottom discontinuity protection for outlet valves and removal of bottom valve handles during transit. The top half of tank car heads are subject to damage and punctures during train derailments and half height head shields fail to provide the protection needed.

A concerned member of the public, Lynne Campbell, urged the Department to ''Select the most protective tank car standards, using the latest technology. Tank Car Option #1 would require 9/16-inch steel, electronically controlled pneumatic (ECP) brakes, and rollover protection.''

An environmental group, the Sierra Club, requested that ''at a minimum, DOT must implement the proposed Pipeline and Hazardous Materials Safety Administration (PHMSA) and Federal Rail Administration (FRA) design option [Option 1] for tank car safety improvements.'' Further, in its comments, the Brotherhood of Locomotive Engineers and Trainmen (BLET) fully support 9/16-inch thickness. In its comments, RLBA stated:

> RLBA believes that increasing the shell thickness from 7/16 to 9/16 is a reasonable compromise between safety and commercial viability of tank cars hauling High-Hazard Flammable materials. RLBA would not support a reduction of the proposed thickness from 9/16 to 8/16 inch but would support an increase from 9/16 to 5/8 or larger.

The Archer Daniels Midland Company in its opposition to Option 1 stated:

> The NPRM modeling used to estimate reduction in risk for increased tank thickness is substantially flawed, and is inconsistent with real-world assumptions on which PHMSA has previously relied and has actually endorsed on the record in this proceeding. This analysis by DOT plainly shows that shell thickness or the effect of a jacket will not result in an appreciable increase in puncture velocity. In this crucial part of the NPRM analysis, by ignoring on the record, and established DOT puncture velocity methods and studies, PHMSA has clearly failed to articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.

Commenter Eighty-Eight Oil, LLC, used the AAR's Conditional Probability of Release Model (CPR) to support a claim that Option 2 and Option 1 (with a 9/16th inch shell thickness) are not economically justified.

Greenbrier fully supported Option 2, particularly, the 9/16 inch shell. They believe if this thickness is not adopted, PHMSA and FRA will be forced to revisit this problem in the future. Further, Greenbrier believes that when adopting a thickness PHMSA and FRA should accommodate for a margin of safety to avoid a scenario in which the topic is required to be modified in the future.

Exxon/Mobil supported Option 2, but with 8/16-inch shell. It suggested that unlike 9/16-inch, the 8/16-inch design has been fully engineered and can be implemented immediately. According to Exxon the weight increase by shell thickening is 2% from 7/16-inch to 8/16-inch and 4% from 7/16-inch to 9/16-inch so a lesser thickness would lessen wear on the rail track infrastructure and reduce weight penalty. It is their understanding that an 8/16-inch car reduces risk by 81% over legacy DOT–111 tank car.

API (and AAR) also supported a modified Option 2, with an 8/16-inch shell thickness. They state that the added weight of a 9/16-inch shell thickness would be offset safety-wise by the increased number of trains on tracks. Another commenter, NITL, also supports an 8/16-inch tank shell under Option 2.

AFPM, quoted a 2009 study conducted by Volpe that concluded, ''shell thickness had a relatively weak effect on preventing releases during derailments.'' In its comments AFPM ''supports the Option 3 specification for new and retrofitted rail tank cars shipping crude and ethanol in unit trains of 75 cars or more. The Option 3 specification tank car is an enhanced CPC–1232 tank car with a 7/16″ shell and other enhanced safety features. The Option 1 and 2 tank cars with a 9/16″ shell provide only negligible safety benefits at a substantial incremental cost.''

The Hess Corporation stated, ''[t]he AAR/API recommendation supported by Hess is based on the Option 3 tank car proposed by PHMSA, but increases the shell thickness of the jacketed tank car from a 7/16-inch shell to an 8/16-inch shell.'' In its comments, ''Phillips 66 supports the CPC–1232 at 8/16.''

PHMSA and FRA disagree with those who do not support a 9/16-inch thickness. Specifically, the final RIA for this rulemaking provides support for the effectiveness of the 9/16-inch thickness. In addition, PHMSA and FRA agree with commenters like Greenbrier and the concerned citizens who voiced a desire for the most effective thickness in preventing punctures. Options 1 and 2 require DOT Specification 117 tank car head and shells to be a minimum of 9/16-inch thick. This final rule also requires an 11-gauge steel jacket. The final RIA contains a detailed discussion of the improvement in the puncture force for Options 1 and 2 relative to the current specification requirements for a DOT Specification 111 tank car. The RIA also discusses the respective effectiveness rates of various tank specifications which lead to PHMSA and FRA's decision on a shell and head thickness of 9/16-inch.

The combination of the shell thickness and head shield of Options 1 and 2 provide a head puncture resistance velocity of 18.4 mph. Because the Option 3 tank car has a 7/16-inch shell, as opposed to the 9/16-inch shell in Options 1 and 2, it has a head puncture resistance velocity of 17.0 mph. It is for these reasons, PHMSA is adopting the 9/16-inch shell thickness as proposed in the August 1, 2014, NPRM for new construction of the DOT–117 specification tank car. See also the final RIA.

Top Fittings/Rollover Protection

The top fitting protection consists of a structure designed to prevent damage to the tank car service equipment under specified loading conditions. As adopted in this final rule, newly constructed tank cars will require top fittings consistent with the AAR's specification for Tank Cars, M–1002, appendix E, paragraph 10.2.1. In general, there was support for some top fittings protection, but not for the dynamic top fittings protections meeting a 9-mph performance standard required for tank cars required for the transportation of TIH materials.

Further, some commenters suggested continued development of top fittings protection. PHMSA is aware that the AAR Tank Car Committee has started a working group to investigate cost effective advancements in existing top fittings protections. PHMSA and FRA are supportive of these efforts as they would apply to both new and retrofitted tank cars. PHMSA and FRA may conduct further testing and develop future regulatory requirements if appropriate. We have summarized a few selected comments below to provide some idea of the overall comments.

RLBA recommended that the development of structures to contain and protect the over pressure device be continued including recessing the device in an inverted dome fastened to the shell.

Earthjustice, an environmental group, strongly urged ''PHMSA to require existing tank cars to have additional top-fittings protections (which the Canadian proposed rule would do).''

AAR's comments on top fittings protection were consistent with many other commenters. In particular the AAR noted the importance of top fittings protections yet stressed concern with overly burdensome top fittings standards. AAR stated it ''supports enhanced top-fittings protection, but not the 9 mph standard.''

Because there was little substantive opposition to the adoption of enhanced top fittings protection for new construction of the DOT–117 specification tank car, PHMSA and FRA are adopting such requirements consistent with the AAR's specification for Tank Cars, M–1002, appendix E, paragraph 10.2.1 as opposed to dynamic top fittings protections meeting a 9-mph performance standard.

Under proposed Option 1, the DOT Specification 117 tank car would be required to be equipped with a top fittings protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 mph, in which the rolling protective housing strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector. Generally this (TIH top fittings protection) requirement was not supported by the regulated community but was supported by those endorsing the most robust tank car possible. Below are a few selected comments to provide some idea of the overall comments.

Dow stated with regard to the top fittings on Option 1 that, ''[o]ne rail tank car manufacturer indicated at least $8,000 additional cost for § 179.102–3 dynamic load roll-over protection . . . . The thicker 9/16-inch steel tank shell indicated in the NPRM may also require even larger nozzle reinforcement pads at additional cost.''

Another opposing commenter, Greenbrier, stated that it does not support TIH rollover protection, claiming it is an unproven technology. It does, however, support AAR specification M–1002, appendix E, Paragraph 10.2.1 Top Protection.

ADM asserted, ''PHMSA assumes without any supporting data that top fittings will decrease the damage to service equipment by 50 percent.''

PHMSA and FRA agree with commenters opposed to the TIH style rollover protection system proposed in Option 1 for new construction of the DOT–117 specification tank car. We disagree that it is ''unproven technology.'' Specifically, this is not a specific technology but rather a performance standard. Also, the standard exists and is used for tank car transporting PIH commodities. There are thousands of tank cars in operation that meet this standard. We do not believe this is a matter of technology but rather a matter of whether a practical design could be developed, one that will not introduce excessive stresses elsewhere in the tank in the event of a roll-over.

Therefore, while we disagree that it is ''unproven technology,'' we do not feel the effectiveness of the TIH rollover protection is justified when considering the cost of such a system and thus, we are not adopting such standards in this final rule.

Braking

For comprehensive analyses, conclusions, and regulatory codification on the braking proposal, see ''Advanced Brake Signal Propagation Systems.''

Supporting Analyses and Conclusions

The discussion below provides some of the supporting analysis that shaped PHMSA and FRA's decisions on the requirements for the new construction of the DOT–117 specification tank cars. For further detail and a more comprehensive discussion of our analysis, see the final RIA for this rulemaking. This section highlights particular areas that were the focus of numerous comments.

Puncture Resistance

Effective October 1, 2015, for new car construction, the adopted specification requirements are the same as proposed Option 2. See the ''Advanced Braking Signal Propagation Systems'' section for discussion on ECP braking. Industry is currently building DOT–111 tank cars constructed to the CPC–1232 standard. The primary difference between Option 2 and the jacketed DOT/CPC–1232 car is that the former has a 9/16 inch thick shell. Additional required thickness provides improved shell puncture resistance ranging from 7% to 40% depending on the initial speed and brake system employed as indicated in the following table:

TABLE 16—REDUCTION IN THE NUMBER OF PUNCTURES GIVEN TANK CAR DESIGN, INITIAL SPEED, AND BRAKE SYSTEM, WHEN COMPARED TO AN UNJACKETED DOT 111 TANK CAR WITH A TWO-WAY EOT DEVICE

	Two-way EOT device		ECP	
Tank car option	40 mph	50 mph	40 mph	50 mph
DOT 111 no jacket	0	0	2.3	1.4
7/16-inch w/jacket	5.0	6.5	6.8	7.2
8/16-inch w/jacket	5.6	7.3	7.3	8.0
9/16-inch w/jacket	6.2	8.1	7.8	8.7

Tank cars with a jacket are equipped with a one-half inch thick full height head shield. A two-way EOT device is applied to the end of the last car in a train to monitor functions such as brake line pressure and accidental separation of the train using a motion sensor. The two-way EOT device also is able to receive a signal from the lead locomotive of the train to initiate emergency braking from the rear of the train. ECP brakes are electronically controlled from the locomotive and can be used to initiate braking on all ECP-equipped cars in a train at substantially the same time. *See* ''Advanced Brake Signal Propagation Systems,'' below, for additional discussion.

Based on these effectiveness and the associated incremental cost, PHMSA and FRA have chosen the 9/16 thickness due to its increased puncture resistance. See the RIA for this final rule for further analysis.

Conditional Probability of Release

Many commenters who provided data and analysis in an effort to refute PHMSA and FRA modeling data did so with the use of the Conditional Probability of Release (CPR) modeling. In addition, some commenters challenged PHMSA and FRA modeling as a weakness in our analysis. In July 2014, FRA released a study conducted by Sharma and Associates entitled

''Objective Evaluation of Risk Reduction from Tank Car Design & Operations Improvements'' that describes a novel and objective methodology for quantifying and characterizing the reductions in risk (or reductions in puncture probabilities) that resulted from changes to tank car designs or the tank car operating environment. This approach can be used as an alternative to CPR when describing tank car performance. The report is placed in the docket for this proceeding at PHMSA–2012–0082–0209 which can be accessed online at *www.regulations.gov*. The following is an excerpt from the study relevant to this discussion:

> The methodology captures several parameters that are relevant to tank car derailment performance, including multiple derailment scenarios, derailment dynamics, impact load distributions, impactor sizes, operating conditions, tank car designs, etc., and combines them into a consistent probabilistic framework to estimate the relative merit of proposed mitigation strategies.
>
> The industry's approach (CPR) to addressing these questions has been to rely on past statistical data from accidents. RA–05–02, a report published by industry, and its more recent derivatives, have been used by the Association of American Railroads (AAR) and other industry partners as a means to address the above questions, in so far, as it relates to thickness changes. This approach has shortcomings, such as:
>
> • Limited applicability—cannot be applied to innovative designs or alternate operating conditions
>
> • Inconsistency—risk numbers seem to change with the version of the data/model being used
>
> • Based on a limited dataset, that may not have good representation from all potential hazards, particularly low probability-high consequence hazards, and car designs/features present only in limited quantities in the general population of tank cars.
>
> While the statistical data may be useful as a general gauge for safety, it does not make a valuable tool for future engineering decisions, or, for setting standards. Therefore, there is a distinct need to develop an objective, analytical approach to evaluate the overall safety performance and the relative risk reduction, resulting from changes to tank car design or railroad operating practices. The research effort described here addresses this need through a methodology that ties together the load environment under impact conditions with analytical/test based measures of tank car puncture resistance capacity, further adapted for expected operating conditions, to calculate resultant puncture probabilities and risk reduction in an objective manner. While not intended to predict the precise results of a given accident, this methodology provides a basis for comparing the relative benefits or risk reduction resulting from various mitigation strategies.

In addition, some commenters challenged PHMSA and FRA modeling as a weakness in our analysis. For example, Dr. Steven Kirkpatrick of Applied Research Associates, Inc., in his September 29, 2014, comments to the NPRM, entitled ''*Review of Analyses Supporting the Pipeline and Hazardous Materials Safety Administration HM–251 Notice of Proposed Rulemaking, Technical Report,''* challenged the methodology used in the July 2014 Sharma & Associates study. These comments were combined with the AAR and its TTCI comments under docket reference number PHMSA–2012–0082–3378 of this proceeding.

PHMSA and FRA stand behind the assumptions, conclusions, and methodology used in the Sharma Associates study on puncture resistance. In addition, based on the comments received this methodology was modified, where appropriate, to provide better results. Specific modifications are discussed below. For a more comprehensive discussion, see the RIA.

- The effect of derailment occurring at different locations throughout the train was included in the calculations.
- In the NPRM, 12 scenarios were used for each calculated most probable number of cars punctured. The scenarios have been expanded to 18, based on 3 track stiffness values, 3 friction coefficients, and 2 derailment initiating force values.
- Multiple analyses have been conducted in which the impactor distribution was varied towards either larger or smaller impactors.

In addition, the *Review of Analyses Supporting the Pipeline and Hazardous Materials Safety Administration HM–251 Notice of Proposed Rulemaking, Technical Report* offered some analysis PHMSA and FRA do not agree with. Below, PHMSA and FRA explain why they do not agree with some of the critiques put for the in that technical report. For a more comprehensive discussion see the RIA.

- PHMSA and FRA believe that the ''ground friction coefficient values'' used in the Sharma modeling analysis are methodical, reasonable, and adequate for the purposes of evaluating the relative performance of alternative tank car designs and determining the effectiveness rates of the proposed tank car design standards.
- PHMSA and FRA disagree with the Review of Analyses' critique of the Sharma modeling's ''assumed impactor distribution'' and reiterate that the Sharma modeling's assumptions are generally consistent with ''real life observations.'' In his critique, Dr. Kirkpatrick states that a larger impactor size should have been used for the analysis. However, in his report, ''Detailed Puncture Analyses Tank Cars: Analysis of Different Impactor Threats and Impact Conditions'', file name:TR_Detailed Puncture Analyses Tank Cars_20130321_final.pdf, page 2 (page 20 of PDF file) Dr. Kirkpatrick indicates smaller impactors sizes are appropriate.[48]

> ''A significant finding from the first phases of the study is that there are many potential impact threats with a relatively small characteristic size. When the combinations of complex impactor shapes and off-axis impactor orientations are considered, many objects will have the puncture potential of an impactor with a characteristic size equal to or smaller than the 6-inch impactor used in previous tank car tests.''

- PHMSA and FRA are confident that the findings for the number of tank cars derailed in derailment simulations are largely consistent with the ''spread seen in actual derailment data.''

The methodology used for calculating the effectiveness of the enhanced tank car design features, is covered in detail in the RIA. By combining well-established and new research with recent, directly applicable derailment data, this method appropriately considers the unique risks associated with the operation of HHFTs. The table below provides the calculated effectiveness rates of the proposed new car specification and retrofit specification relative to existing tank cars.

TABLE 17—EFFECTIVENESS OF NEWLY CONSTRUCTED AND RETROFITTED TANK CAR OPTIONS

Effectiveness rates of the PHMSA/FRA (NPRM Option 1) relative to the following	
DOT–111 non-jacketed	*0.504
CPC–1232 non-jacketed	0.368
DOT–111 jacketed	0.428
CPC–1232 jacketed	0.162
Effectiveness Rates of the Enhanced Jacketed CPC–1232 (NPRM Option 3) relative to the Following	
DOT–111 non-jacketed	0.459
CPC–1232 non-jacketed	0.31
DOT–111 jacketed	0.376
CPC–1232 jacketed	0.01

*These figures represent the percent effectiveness when comparing the DOT–117 and DOT–117R against the existing fleet in the first column. For example a DOT–117 is 50% more effective than a DOT–111 non-jacketed

[48] Detailed Puncture Analyses Tank Cars: Analysis of Different Impactor Threats and Impact Conditions'' can be found at: *http://www.fra.dot.gov/eLib/details/L04420.*

Weight Penalty

Some commenters raised concerns about potential loss of lading capacity due to the increased weight of the new tank cars. Concerns were raised about the loss of capacity of new or retrofitted tank cars because of the increased weight of the tank car resulting from the added safety features. The additional features that will affect the tare weight of the tank car include an 11-gauge jacket, thicker shell and full height, ½-inch thick head shield.

The majority of commenters in the rail and shipping industries cited the potential loss of lading capacity due to the increased weight of the new tank cars as a central concern related to the selection of a tank car specification. While most comments from the rail and shipping industries were concerned with potential loss of lading capacity, one commenter, Greenbrier, actually refuted the claims of weight issues made by a larger portion of the regulated community. It noted that there are those:

> who suggest that a 9/16 inch shell thickness will significantly lower the volume capacity of the tank car. The legacy DOT–111 tank cars were limited to 263,000 pounds total weight on rail. Recently, the AAR and FRA increased that limit to 286,000 pounds, or a 23,000 pound increase. Greenbrier's legacy 263,000 pounds, 30,000 gallon, tank cars weigh 68,000 pounds (light weight) and have a load limit of 195,000 pounds. Greenbrier's proposed tank car of the future with a 9/16 inch shell weighs 90,500 pounds, has a volume capacity of 30,000 gallons and a load limit of 195,500 pounds. In other words, while the weight of the proposed car increases by 22,500 pounds, the volume capacity actually increases by 100 gallons and the weight capacity increases by 500 pounds.

PHMSA and FRA disagree with commenters' claims that the rule will necessarily reduce the load limit (*i.e.* the weight of the lading) of current and future crude and ethanol tank cars in the absence of this rule, and consequently disagrees with the claim that the increased tare weight will necessitate an increase in the number of carloads required to move a given amount of product. The maximum allowable GRL is 286,000 pounds. PHMSA and FRA believe that, for all but an inconsequentially small number of such tank car loads, the difference between the current weight of a loaded car using standard operating practices and 286,000 lbs. is more than the weight that will need to be added to comply with this rule. This is true for both the current crude and ethanol fleet and new tank cars (including jacketed and non-jacketed CPC–1232 cars) as they would have been placed into this service over the next 20 years in the absence of this rule. Therefore, the vast majority of tank cars will be able to comply with this rule without realizing any meaningful loss in capacity. Consequently we have not accounted for any capacity losses in our analysis. The issue of a weight and capacity limitations is addressed in-depth in the RIA.

Conclusion

Based on the previous discussion as well as the RIA, in this final rule, PHMSA and FRA are adopting Option 2 (see braking section of this rulemaking for discussion of braking systems to be included on tank cars) as the DOT Specification 117 tank car standard for new construction. The table below further summarizes details of the adopted enhanced tank car design standard (DOT specification 117) compared with the DOT 111A100W1 Specification currently authorized.

TABLE 18—SAFETY FEATURES OF DOT SPECIFICATION 117 TANK CAR

Tank car	Bottom outlet handle	GRL (lbs.)	Head shield type	Pressure relief valve	Shell thickness	Jacket	Tank material	Top fittings protection	Thermal protection system	Braking
Selected Option: DOT Specification 117 Tank Car.	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.	286K	Full-height, ½ inch thick head shield.	Reclosing pressure relief device.	9/16-inch Minimum.	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight.	TC–128 Grade B, normalized steel.	Must be equipped per AAR Specifications for Tank Cars, appendix E paragraph 10.2.1.	Thermal protection system in accordance with § 179.18.	Dependent on service
DOT 111A100W1. Specification (Currently Authorized).	Bottom Outlets are Optional.	263K	Optional; Bare Tanks half height; Jacket Tanks full height.	Reclosing pressure relief valve.	7/16-inch Minimum.	Jackets are optional.	TC–128 Grade B, normalized steel*.	Not required, when equipped per AAR Specifications for Tank Cars, appendix E paragraph 10.2.1.	Optional	EOT device (See 49 CFR part 232)

*For the purposes of this figure, TC–128 Grade B normalized steel is used to provide a consistent comparison to the proposed options. Section 179.200–7 provides alternative materials, which are authorized for the DOT Specification 111.

2. Retrofit Standard

In the August 1, 2014 NPRM, we proposed to require that existing tank cars meet the same DOT Specification 117 standard as new tank cars, except for the requirement to include top fittings protection. In this final rule, we are adopting retrofit requirements for existing tank cars in accordance with Option 3 from the NPRM (excluding top fittings protection and steel grade). If existing cars do not meet the retrofit standard by the adopted implementation timeline, they will not be authorized for use in HHFT service. See the ''Advanced Brake Signal Propagation Systems'' section of this rulemaking for discussion of braking systems to be included on tank cars.

In Safety Recommendation R–12–5, the NTSB recommended that new and existing tank cars authorized for transportation of ethanol and crude oil in PG I and II be equipped with enhanced tank head and shell puncture resistance systems and top fittings protection. However, PHMSA chose not to include top fitting protections and changes in steel grade as part of any retrofit requirement, as the costliness of such retrofit is not supported with a corresponding appropriate safety

benefit.[49] We do apply the retrofit standard to tank cars carrying all flammable liquids in HHFTs, and not just ethanol and crude oil in PG I and II. Retrofitted legacy DOT–111 tank cars will be designated as ''DOT–117R.''

In consideration of adopting a retrofit standard, two aspects were considered thoroughly: (1) The technical specifications of the retrofit standard compared to the current fleet composition and (2) the corresponding retrofit schedule timeline. The timeline for retrofits will be discussed in greater detail in the upcoming section of this document entitled ''Implementation Timeline.'' In this section, we will focus on the technical specifications of the retrofit standard when compared with the current fleet composition.

PHMSA firmly believes that reliance on HHFTs to transport millions of gallons of flammable liquids is a risk that must be addressed. For the purposes of flammable liquids, under the proposals in the August 1, 2014 NPRM, the legacy DOT Specification 111 tank car would no longer be authorized for use in an HHFT after the dates specified in the proposed retrofit schedule. In recent derailments of HHFTs, the DOT Specification 111 and CPC–1232 tank car has been identified as providing insufficient puncture resistance, being vulnerable to fire and top-fittings damage, and they have bottom outlet valves that are can be inadvertently opened in accident scenarios. These risks have been demonstrated by recent accidents of HHFTs transporting flammable liquids.

In the August 1, 2014, NPRM, we proposed to limit continued use of the DOT Specification 111 tank car to non-HHFTs. In addition, we proposed to authorize the continued use of legacy DOT Specification 111 tank cars in combustible liquid service. The risks associated with flammable liquids, such as crude oil and ethanol, are greater than those of combustible liquids. The requirements proposed in the NPRM were not applicable to HHFTs of materials that are classed or reclassed as a combustible liquid. Existing HMR requirements for combustible liquids will not change as a result of this final rule. Thus, except for those tank cars intended for combustible liquid service, after the established implementation timeline, any tank car used in a HHFT must meet or exceed the DOT Specification 117, 117P, or the 117R standard. Those tank cars not retrofitted would be retired or repurposed. Further, if it can be demonstrated that an existing tank car can meet the new performance standards, it will be authorized for use in a HHFT as a DOT Specification117P.

General Retrofit Comments

We received a variety of comments representing differing viewpoints in response to the proposed tank car retrofit standard. Overall, 45 commenters supported the retrofit of existing fleets; 56 commenters opposed the retrofit of the existing fleets and 41 commenters asserted the retrofit standards as proposed in the NPRM did not go far enough. We have summarized a few selected comments below to provide some idea of the overall comments.

E.I. du Pont de Nemours and Company requests that PHMSA, ''authorize the continued use of existing DOT 111 tank cars for non-crude and non-ethanol Class 3 flammable service for the remainder of their useful life. Non-HHFT shipments of crude oil and ethanol also should be permitted in DOT 111 tank cars for the remainder of their useful life.''

Eighty-Eight Oil, LLC asserted its belief that ''the CPC–1232 jacketed fleet [should be permitted] to operate for its full useful life with a potential retrofit limited to an enhanced BOV handle and a larger pressure relief valve.''

PHMSA sought to limit the unnecessary retirement or repurposing of tank cars while implementing meaningful safety improvements on the existing fleet. This final rule requires the tank cars used in an HHFT to be retrofitted to specifications equivalent to Option 3 in the NPRM. This enables tank car owners to realize the full useful life of an asset. The final rule does not impact existing DOT–111 tank cars used in Class 3 flammable service that are not a part of an HHFT.

In support of retrofitting existing fleets, GBW noted that:

> GBW will be making substantial capital investments and will hire, train, and certify 400 new employees over the next year, creating jobs throughout the United States. Moreover, GBW is making its capital investments now to expand retrofit capacity and conducting hiring activity in advance of a final rule.

In its comments, Bridger noted their economic concerns over an overly burdensome retrofit standard, noting ''the economics of retrofitting the older and cheaper DOT–111 tank cars is considerably different from the economics of retrofitting the newer and costlier CPC–1232 tank cars.'' Bridger's main concern is that the price of tank cars has increased significantly, with a CPC–1232 costing 80% more (in 2014) than the DOT–111 (in 2008); and it noted this is very important because it is not equitable, as its competitors have less costs per tank car and undergo the same operations (using a retrofitted DOT–111).

The comments of Edward D. Biggs III question whether any other modifications (including jacketing) for DOT 111 tank cars built with normalized steel shells are necessary.

Cargill estimated that it would cost in excess of $45 million to retrofit its existing fleet of tank cars. Cargill expects that retrofitting costs will be $60,000 per tank car, more than twice the figure assumed by PHMSA.

In its comments, AFPM stated that it supports ''the Option 3 specification for new and retrofitted rail tank cars shipping crude and ethanol in unit trains of 75 cars or more. The Option 3 specification tank car is an enhanced CPC–1232 tank car with a 7/16'' shell and other enhanced safety features. The Option 1 and 2 tank cars with a 9/16'' shell provide only negligible safety benefits at a substantial incremental cost.''

The RSI–CTC supported retrofits in accordance with Option 3 for all PG I and PG II flammable liquid tank cars. But it supports only the addition of PRV and BOV protection at requalification for Class 3, PG III tank cars. RLBA echoes RSI–CTC with its recommendation that existing cars be retrofitted with the latest design of self-closing high capacity over pressure devices that meet the same standards as new car construction.

In addition to the previous general comments on the retrofitting of existing tank cars, the following notable issues were frequently cited when discussing the topic. In the following, we discuss comments on each issue, concerns raised and our response to the comments.

Shop Capacity

Numerous commenters asserted that shop capacity is insufficient to retrofit existing fleets in a timely and cost-effective manner or in accordance with the schedule proposed in the NPRM. Specifically, RSI–CTC noted that there are tiers of retrofitting that vary based on complexity. For example, retrofitting a legacy non-jacketed DOT–111 is a much more intensive process than retrofitting the most recent jacketed CPC–1232. RSI–CTC asked in their

[49] The cost to retrofitting a tank car with the proposed top fitting protection is estimated to be $24,500 per tank car, while the comparable effectiveness rates are low. However, the effectiveness rates were calculated assuming cars punctured would release all lading through the breach regardless of top fittings damage. With improved puncture resistance, lading loss through damaged top fittings will become a more significant point of release.

comments that PHMSA and FRA consider the complexity of these retrofits and the shop capacity to complete them in our analysis. We agree and have since revised our analysis accordingly. See RIA. Below are some additional comments that represent issues related to shop capacity.

In its comments, Eighty-Eight Oil, LLC stated, ''[a]ccording to the regulatory impact analysis in the NPRM (page 89), PHMSA suggests that 66,185 cars can be retrofitted over 3 years, or 22,061 cars per year. This estimate is considerably higher than the AllTranstek study estimate of 3,000 per year or RSI's estimate of 5,700 per year (after a one year ramp up period).'' [50] Eighty-Eight Oil, LLC continues, ''during this timeframe, thousands of new cars were manufactured to handle the growing business but there has not been a repair facility of any significant size put into service. The costs of retrofitting existing cars will cause many cars to be retired rather than retrofit thus adding to the shortage of cars in the network.''

Honeywell Performance Materials and Technologies stated that the ''backlog for present mechanical needs and requalification on all tank cars will be increased.'' In addition a report commissioned by RSI and authored by Brattle noted that shop capacity could be a considerable issue when determining a retrofit standard.[51] A similar report commissioned by API and authored by IFC international noted similar concerns.[52] API also expressed implementation concerns about shop capacity, the current backlog of car orders, and engineering capacity. Both these reports are discussed in the final RIA but it should be noted both these reports based their findings on the 5 year retrofit schedule which has since be revised.

In general, commenters expressed concern about the availability of materials, the availability of skilled labor, and facilities to conduct the needed procedures involved in a retrofit. PHMSA and FRA considered these and other concerns when determining a retrofit standard.

PHMSA and FRA understand the concerns with regard to shop capacities. Specifically, concerns about the time that will be required to acquire additional resources needed to build and ramp up facilitates to conduct retrofits, as well as the manufacturing and supply of the materials needed for the components of the tank cars (*i.e.,* steel plates and sheets, new valves, etc.). PHMSA and FRA also understand the limitations of the existing labor force. For example, a skilled labor force (welders, metal workers, machinists, etc.) must be hired and trained to perform the necessary retrofit work correctly and safely. We agree with many of the issues raised by commenters and have revised our analysis with regard to the retrofit standard.

Trucks

Many public commenters raised technical issues and potential implementation problems from an industry-wide retrofit for HHFTs. For example, the API public comment noted issues with the extra weight on stub sills and tank car structures, and issues with head shields and brake wheels/end platforms, and issues with truck replacement. Below is a list of comments that represent concerns over how the retrofit standard will affect the existing trucks of tank cars.

Amsted Rail believes PHMSA underestimated the cost of a new car and, in its comments, lists the prices for several components, suggesting $20,000 for complete car set of new trucks versus the $16,000 amount used by PHMSA.

It is RSI–CTC's understanding that modifications will add 13,000 pounds to cars; that trucks will require modification from 263,000 to 286,000; and that new wheel sets will cost $10,000 per car; and that new roller bearings, axles, and adaptor possibly will be added to the car. In its comments, Amsted Rail Company, Inc. also asserted that trucks will need replacement on 29,302 ethanol tank cars (pre 2011), 28,300 crude oil tank cars (pre CPC–1232), and 36,000 tank cars in ''other'' Class 3 flammable liquid service.

PHMSA and FRA believe that the majority of tank cars constructed in the last decade are equipped with trucks, save a particular sized bearing and bearing adaptor, that are rated for 286,000 pound gross rail load service. Further, the AAR's Engineering and Equipment Committee rules require replacement of trucks (bolster and side frames) and wheel sets when the gross rail load of a rail car is increased from 263,000 to 286,000 pounds. As a result, what would otherwise be a relatively small cost of approximately $2,000 to replace the bearing and adaptor, car owners are required to replace the trucks and wheel sets at the cost of $24,000/truck. The paucity of data distinguishing the cars that need a major versus minor retrofit leads PHMSA to conservatively assume all DOT legacy tank cars will require the replacement of the trucks and wheel sets.

Repurpose/Retirement

In the August 1, 2014 NPRM, we proposed, except for top fittings protection, to require existing tank cars that are used to transport flammable liquids as part of a HHFT to be retrofitted to meet the selected option. Those not retrofitted would be retired, repurposed, or operated under speed restrictions for up to five years, based on the packing group assignment of the lading being transported. The following commenters had varying opinions about this assumed strategy.

The RSI–CTC asserted that the minimum early retired tank cars rather than retrofit will be approximately 28% (25,600 tank cars). However, the AAR supports the repurposing of legacy tank cars to Canadian oil sands service. Eastman Chemical Company ''. . . also agrees with PHMSA's proposal to retain the exception that permits flammable liquids with a flash point at or above 38 °C (100 °F) to be reclassified as combustible liquids and allow existing DOT Specification 111 tank cars to continue to be authorized for these materials.''

The Massachusetts Water Resources Authority, ''supports the requirement of Packing Group III in the enhanced car standards as this provides consistency in providing packaging appropriate to handle all flammable liquids. These flammable liquids pose a safety and environmental risk regardless of the packing group.''

Bridger, does not agree with PHMSA's assumption that DOT–111 jacketed and CPC–1232 jacketed cars would be repurposed for use in Canadian oil sands service, as it requires heating coils and insulation in the tank car.

The Independent Petroleum Association of America (IPAA) stated in its comments, ''PHMSA's timeline for DOT–111 railcars is predicated on the assumption that DOT–111s now in use for PG I or PG II hazmat will be moved into PG III service. Even heavy Canadian crudes once mixed with diluents and shipped as ''dilbit'' or ''railbit'' are not expected to qualify as PG III materials, and therefore will not qualify as a home for the displaced DOT–111 railcars.''

DGAC asserted, ''[t]here is an assumption that all Legacy DOT 111 Jacketed and CPC–1232 Jacketed tank cars would be assigned to Canadian oil sands; however, under Transport Canada, these cars may also have to be retrofitted based on regulations.''

[50] It should be noted that this estimate was later revised to 6,400 units per year by RSI–CTC.

[51] See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-3415.*

[52] See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-3418.*

Growth Energy suggests the shift to Canadian oil sands service is greatly overestimated, and underestimates the costs of doing so (requires retrofit for heating coils), costs of moving cars, and the costs of moving leases. According to Exxon Mobil Corporation, ''[t]he DOT proposal to move DOT–111 tank cars to oil sands service is not feasible as the diluted bitumen to be shipped is PG I or II and carried predominantly in unit trains. There is limited projected growth in other, non-flammable products moved by rail.''

In their comments, Earthjustice, Forest Ethics, Sierra Club, NRDC, and Oil Change International asserted, ''the proposed rule would allow the DOT–111 and other unsafe tank cars to be shifted to tar sands service. The rule is thin on analysis to support this shift. However, on its face, it would be indefensible to allow unsafe tank cars to be used to ship tar sands bitumen diluted with chemicals that contain volatile components. Accidents involving diluted bitumen are notorious for being impossible to clean up.''

Based on these and other comments, PHMSA and FRA acknowledge that the assumption of no retirements and the level of repurposing needed to be revisited. In response to these comments, PHMSA and FRA have made adjustments to their analysis, and the final RIA to account for retirements as opposed to shifting of tank cars to tar sand service.

Many of the comments with regard to new construction also apply to the retrofit specifications. Below PHMSA and FRA discuss the various components of a retrofit tank car specification (see also new construction as many of those comments apply to both new and existing tank cars). The below discussion highlight those comments that were focused on the retrofit standard.

Shell Thickness

Many commenters posed a concern that a retrofit standard that called for an increased thickness would be technically infeasible and result in the scrapping of existing tank cars. For instance, in its comments, Cargill asserted that it is not feasible to retrofit an existing tank car built with a 7/16-inch steel shell to conform to a 9/16-inch shell requirement. RSI–CTC also stated that Option 1 is not feasible for retrofits. Further, GBW ''does not believe it is practical or economically feasible to bring existing tank cars fully up to the proposed standards for new tank cars particularly with respect to the 9/16 inch shell thickness proposed for the Option 1 and Option 2 tank car.''

PHMSA and FRA understand the concerns of the commenters and note the intent of the rule was not to require adding thickness to existing tank cars, but rather to improve the puncture resistance to the existing cars to be equivalent to a tank with a thicker shell. As it would not be technically feasible to add 1/8th of an inch of steel to a 7/16-inch shell and head when retrofitting a tank car, PHMSA will permit existing DOT–111 fleets to be retrofitted at currently authorized shell thicknesses (7/16-inch).

Top Fittings Protection

The NTSB believes that any retrofits should have top fittings protection, citing incidents in Cherry Valley, IL and Tiskilwa, IL due to where those tank cars breached. NSTB stated they will not consider Safety Recommendation R–12–5 as ''acceptable'' unless top fittings protection is included in the retrofitting requirements.

PHMSA is aware that the AAR Tank Car Committee has started a task force to evaluate potential advancements in existing top fittings protections. PHMSA and FRA urge industry to consider enhancements that will apply to both new and retrofitted tank cars. PHMSA and FRA are not requiring such protection in a tank car retrofit in this final rule. While we do believe this is an important safety feature, it is not cost justified.

Thermal Protection Systems/Pressure Relief Device

In its comments, the Dow stated, ''[it] does support thermal protection for crude oil and ethanol . . . Dow suggests that PHMSA consider non-CPC–1232 cars to be a higher retrofitting priority.'' Dow continues, ''[h]owever, addition of insulation and a jacket to existing DOT Specification 111 cars may introduce Plate clearance issues, so not all existing cars will be able to be retrofitted. Additionally, methods for attaching heavier jackets to prevent shifting during train handling will require engineering analysis; finite element analysis of the stub sill design may also be necessary to determine if existing designs are capable of handling the increased weight. Estimated cost for all the engineering and AAR approval application fees is $85,000 per certificate of construction, as per a major rail supplier.''

PHMSA and FRA do not agree. As stated above, in the Arcadia derailment, there were three high-energy thermal failures. In two of the three cases, the tank fractured into two pieces and those pieces were thrown from the derailment area. In the third case, the tank was nearly fractured around the entire circumference. In addition, NTSB restated the importance of thermal protection in their April 6, 2015 Recommendations. These recommendations, R–15–14 and 15, requested that PHMSA require that all new and existing tank cars used to transport all Class 3 flammable liquids be equipped with thermal protection systems that meet or exceed the thermal performance standards outlined in Title 49 Code of Federal Regulations 179.18(a) and be equipped with appropriately sized pressure relief devices that allow the release of pressure under fire conditions to ensure thermal performance that meets or exceeds the requirements of Title 49 Code of Federal Regulations 179.18(a), and that minimizes the likelihood of energetic thermal ruptures.

Jackets and thermal protection are critical in the survival of a tank car experiencing a thermal event. Thus, thermal protection is adopted as proposed. However, we do note that the new regulation provides flexibility for innovation to meet the performance standard.

Steel Retrofit

Much like the argument against requiring added thickness to retrofitted cars, many posed the relevant concern that a retrofit standard that called for a change in the type of steel used would be technically infeasible and result in the scrapping of existing tank cars. The RSI–CTC requests that non-normalized steel tank cars should be authorized for retrofit as there are 47,300 DOT–111 tank cars currently in service. Normalizing the steel after the tank car has been constructed is impractical. The requirements to this would create considerable cost which would not increase the ultimate strength of the steel.

Normalization does change the mechanical properties of the steel; specifically, a slight improvement in upper shelf toughness and a shift to a lower ductile-brittle transition temperature. PHMSA and FRA understand the concerns of the commenters and note the intent of the rule was not to require a change to the materials specification to existing tank cars, but rather to improve the puncture resistance to the existing cars to be equivalent to a tank constructed of the referenced steel. PHMSA and FRA believe that should a car owner decide to retrofit a tank car, the owner must consider the material properties of normalized steel on the design of the retrofit.

However, tank cars otherwise conforming to the HMR and manufactured of non-normalized steel may remain in service when retrofitted.

Conclusion

Except for top fittings protection and steel retrofit, retrofits will conform to Option 3, subject to brake requirements that depend on the tank car's service, and will be designated ''DOT Specification 117R.'' The retrofit requirements include the addition of an 11-gauge jacket, full height head shield, and a modified bottom outlet configuration.

TABLE 19—SAFETY FEATURES OF RETROFITTED DOT SPECIFICATION 117R TANK CAR

Tank car	Bottom outlet handle	GRL (lbs.)	Head shield type	Pressure relief valve	Shell thickness	Jacket	Tank material	Top fittings protection	Thermal protection system	Braking
Selected option: DOT Specification 117R retrofitted tank car.	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.	286K	Full-height, ½-inch thick head shield.	Reclosing pressure relief valve.	7/16-inch minimum.	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weathertight.	Authorized steel at the time of construction.	Not required, but when equipped per AAR Specifications for Tank Cars, appendix E paragraph 10.2.1.	Thermal protection system in accordance with § 179.18.	Dependent on service.
DOT 111 A100W1 Specification (currently authorized).	Bottom outlets are optional.	263K	Optional; bare tanks half height; jacket tanks full height.	Reclosing pressure relief valve.	7/16-inch-minimum.	Jackets are optional.	TC–128 Grade B, normalized steel*.	Not required, but when equipped per AAR Specifications for Tank Cars, appendix E paragraph 10.2.1.	Optional	EOT device (See 49 CFR part 232).

*For the purposes of this figure, TC–128 Grade B normalized steel is used to provide a consistent comparison to the proposed options. Section 179.200–7 provides alternative materials which are authorized for the DOT Specification 111.

3. Performance Standard

The prescribed performance standards adopted in this rule were developed to provide improved crashworthiness when compared to the legacy DOT–111 tank car and to foster innovation in the development of tank cars. In the NPRM, PHMSA and FRA proposed a performance standard in which the design, modeling and testing results would be approved by the Associate Administrator for Railroad Safety/Chief Safety Officer at FRA.

Accordingly, the final rule requires that the tank car design must be approved, and the tank car must be constructed to the conditions of an approval issued by the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA. The performance of the tank car is subject to the following:

Puncture Resistance

The tank car must be able to withstand a minimum side impact speed of 12 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds. Further, the tank car must be able to withstand a minimum head impact speed of 18 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

Thermal Protection Systems/Pressure Relief Device

The tank car must be equipped with a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing PRD in accordance with § 173.31 of this subchapter.

Bottom Outlet

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with a protection safety system to prevent unintended actuation during train accident scenarios.

Top Fittings Protection

Tank cars tanks meeting the performance standard must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter). A tank car that meets the performance requirements will be assigned to ''DOT Specification 117P.'' Builders must be able to demonstrate compliance with the performance standards and receive FRA approval prior to building the cars.

4. Implementation Timeline

In the August 1, 2014 NPRM, we proposed a risk-based timeline for continued use of the DOT–111 tank car used in HHFTs in §§ 173.241, 173.242, and 173.243. This timeline was based on the packing group requirements in the HMR. The HMR require both the proper classification of hazardous materials and the selection and use of an authorized packaging. Packing groups assign a degree of danger posed within a particular hazard class. Packing Group I poses the highest danger (''great danger'') and Packing Group III the lowest (''minor danger''). In the NPRM, PHMSA proposed a timeline in accordance with the following table:

TABLE 20—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 TANK CARS IN HHFT SERVICE

Packing group	DOT–111 not authorized after
I	October 1, 2017.
II	October 1, 2018.
III	October 1, 2020.

As discussed in the August 1, 2014 NPRM, PHMSA and FRA were confident the risk-based approach proposed provided sufficient time for car owners to update existing fleets while still prioritizing the highest danger material. Specifically, given the estimates of the current fleet size, composition, and production capacity of tank car manufacturers expressed by

comments submitted in response to the ANPRM, we were confident that a two year phase-in of packing group I flammable liquids would not result in a shortage of available tank cars intended for HHFTs. This strategy would have also provided additional time for tank cars to meet the DOT Specification 117 performance standard if offerors were to take steps to reduce the volatility of the material. Nevertheless, we did seek comment as to whether the proposed phase-out period provided sufficient time to increase production capacity and retrofit existing fleets.

As proposed in the August 1, 2014 NPRM, DOT Specification 111 tank cars may be retrofitted to DOT Specification 117 standards (as a DOT Specification 117R), retired, repurposed, or operated under speed restrictions. Further, we proposed limiting the future use of DOT Specification 111 tank cars only if these tank cars are used in a HHFT. Under the proposal, DOT Specification 111 tank cars would be able to continue to be used to transport other commodities, including flammable liquids, provided they are not in a HHFT. In addition, all retrofitted tank cars (including the DOT–111 tank cars meeting the CPC–1232 standards) are authorized for use for their full service life. This proposal provided tank car owners and rail carriers with the opportunity to make operational changes that focus on the greatest risks and minimize the associated cost impacts. In response to the proposed amendments regarding the retrofit timeline, we received a variety of comments representing differing viewpoints.

Harmonization

Commenters state that it is essential that the U.S. position on retrofit timelines is consistent with Canada's. PHMSA has been in close coordination with Transport Canada to ensure the seamless transition with regard to the retrofit of the existing North American DOT Specification 111 fleets. To that end, PHMSA recognizes the importance of harmonization and does not foresee any issues at this time with cross-border retrofit implementation timelines.

Retrofit Capacity

The capability of the industry to handle retrofit tasks and requirements within the proposed timeline was a topic of great interest among commenters. Many questioned PHMSA and FRA's assumptions regarding the retrofit capacity of the industry. The comments summarized and discussed below provide an indication as to the commenters' main concerns on this topic.

The Grain Processing Corporation requests that, ''when setting the timeline for compliance, please work closely with car builders to have an accurate understanding of when new cars can reasonably be made available to the market.'' This commenter further stated, ''current conditions indicate that it will take much more than three to five years to replace non-compliant cars in the market.''

The American Chemistry Council (ACC) stated that tank car shop capacity will not support PHMSA's regulatory timeline and some ACC members have reported waits of approximately two years from when a tank car is ordered until the time it was delivered. The ACC also relayed RSI information stating that the current order backlog is about 53,000 cars.''

The Dakota Gasification Company asserts that:

> PHMSA should consider how an influx of a very large number of DOT 111 cars for retrofit in a market already seeing backlogs for routine maintenance work will permit shippers to meet the proposed timelines in the rule. The rulemaking states there are 80,500 DOT 111 cars and 17,300 CPC 1232 cars in Flammable Service or a total of 97,800 cars potentially in need of some form of retrofit. A record number of tank cars have been produced the past few years. Retrofitting this number of cars while keeping up with yearly maintenance and standard repairs will be unattainable within the proposed timeframe given the current shop system.

In addition a report commissioned by RSI and authored by The Brattle Group noted that there could be considerable issues with a five year retrofit standard when considering production levels, fleet size and the predicted growth of both.[53] A similar report commissioned by API and authored by ICF International noted similar concerns.[54] API also expressed concerns about shop capacity, the current backlog of car orders, and engineering capacity. Both the RSI and the API reports are extensively discussed in the final RIA but it should be noted that both these reports based their findings on the NPRM's five-year retrofit schedule which has since been revised. Regardless, based on the comments received, PHMSA and FRA have modified our analysis and revised the final RIA to account for changes in retrofit capacity.

[53] See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-3415*

[54] See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-3418*

Retrofit Timeline (Length and Approach)

Overall, commenters agree that retrofits must occur, but the suggested timelines range from zero to ten years. In addition, RSI and API commissioned separate reports that evaluated the NPRM's proposed timeline and demonstrated the potential detrimental effects of an overly aggressive timeline. PHMSA has summarized and discussed the differing viewpoints on the retrofit schedule.

Generally, the comments of citizens, environmental groups, tribal communities and local government either supported the timeline as proposed in the NPRM or focused on an even more aggressive timeline than proposed. Some commenters even suggested the immediate ban of DOT 111 Specification tank cars. For example, two tribal communities, the Quinault Indian Nation and the Prairie Island Indian Community, represented the views of many citizens, environmental groups when they stressed the need for an immediate and ''total phase-out of the DOT 111.'' Amtrak encourages PHMSA to require the use of the selected option on as aggressive a schedule as manufacturing and retrofit capabilities permit.

As demonstrated in the final RIA, PHMSA and FRA do not believe a more aggressive timeline than what was proposed in the NPRM is achievable or prudent. In fact, an overly aggressive timeline could have a negative impact on safety or the environment. See the environmental assessment for this rulemaking.

The comments of the regulated industry regarding the implementation timeline varied, but a general consensus for a ten-year time frame emerged. The regulated community was generally consistent in noting that the timeline should account for both the tank car type and the packing group of the material.

In addition to comments on the timeline, PHMSA and FRA received many comments on our packing group based approach. Specifically, many in the regulated community noted that while the proposed method is risk based, it only accounts for the risk of the material itself and not the risks posed by the various types of tank cars used in HHFTs. The general consensus was that a retrofit timeline that accounted for the type of tank car would provide the greatest risk reduction in the shortest amount of time. Below are some relevant comments regarding the proposed timeline.

GBW suggested that, ''[w]hile the timeline [for retrofitting] is aggressive, the tank car repair industry, by expanded [sic] capacity at existing facilities and through new entrants into the industry, should be able to meet PHMSA's proposed timeline.''

Further, RSI–CTC stated that PHMSA and FRA should retrofit crude oil and ethanol tank cars first then other Class 3 tank cars. It noted that retrofit capacity is only 6,400 units per year whereas PHMSA assumes 22,061 units per year. RSI–CTC continues, ''there are 50K non-jacketed tank cars in service (23K crude and 27K ethanol/legacy and CPC 1232) that cannot be retrofitted by 10/01/2017—only 15K can be retrofitted by that time.''

Growth Energy requested a 3- to 10-year retrofit schedule. Arkema Inc., ''agrees with the RSI–CTC's December 5, 2013 recommendation to adopt, at a minimum, a 10-year program allowing compliance to be achieved in phases through modification, re-purposing or retirement of unmodified tank cars in Class 3, flammable liquid service.''

Quantum Energy, Inc. stated, if PHMSA elects not to adopt this exclusion for treated crude oil that they support ''at minimum establishing a phase-out date of October 1, 2022 for the use of DOT–111 tank cars in transporting stabilized crude oil.''

The Washington Utilities and Transportation Commission (WUTC) stated that tank cars that meet the AAR CPC–1232 standards and were built after October 1, 2011, should be allowed to continue in service for their economic life, except for the transportation of Packing Group I materials past October 1, 2016. Further, WUTU recommends that the proposed timeline for phasing out DOT Specification 111 tank cars should be expedited for Packing Group I and II materials by a year, and that all existing tank cars more than 10 years old have a thorough tank shell thickness inspection to ensure the tank is suitable for PG II and PG III, Class 3 flammable liquids. Any tank that shows significant signs of corrosion should be taken out of crude, ethanol, and any other Packing Group I or II service immediately.

Suggesting an alternate retrofit strategy, Eighty-Eight Oil, LLC stated, ''Eighty-Eight supports a 7 year retrofit schedule.'' According to Eighty Eight, the requirements for retrofitting cars will necessitate a longer time frame than proposed in the NPRM, given: the ''car cleaning'' process and preparation for ''hot work'' or retrofitting; training workers for tank car repair work; approval (via the AAR) of high-flow pressure relief valve technology; and the enabling of the production of full height head shields within repair shops.

In addition to these comments, RSI–CTC, API, Exxon, APFM and many others in the regulated industry provided specific alternative retrofit timelines which can be viewed in the docket for this rulemaking. PHMSA and FRA reviewed comments, alternative timelines, and data regarding the retrofit timeline and revised our implementation schedule accordingly. PHMSA is confident that retrofits can be accomplished in the revised timeline adopted in this final rule.

In developing the retrofit schedule, PHMSA and FRA examined the available shop capacity, the comments received, historical performance of the rail industry dealing with retrofit requirements, and the potential impacts associated with the retrofit schedule.

PHMSA has accepted feedback regarding its assumption of no retirements and the impracticality of transferring jacketed tank cars to tar sands service. This final rule and the RIA now consider the number of cars that could be retired early as a result of the rule and the associated costs of doing so. PHMSA believes that rail cars will be retired early when their owners have weighed the cost of meeting retrofit requirements against the marginal cost of acquiring a replacement rail car early.

Further, to aid in the analysis of an appropriate retrofit timeline, FRA developed a model to project the tank car retrofit capacity over time. The model is based on Wright's learning curve theory, which suggests that every time the total number of units that have been produced doubles, productivity will increase by a given percentage. This percentage is known as the learning rate.

The starting point of the analysis was to analyze the rail industry's forecast, as represented in the Brattle Group Report commissioned by RSI–CTC. Using the Brattle reports figure of 6,400 retrofits per year the FRA model was able to determine that the Brattle report would have to assume 40 facilities would be required to dedicate one crew to retrofits. After making this determination on the number of facilities, FRA sought to include other variables to model additional potential scenarios. The intent being to depict the extent to which the ''heavy retrofit'' [55] capacity will increase to a degree over time. The variables for the FRA model included the learning rate, number of crews, and number of facilities. In the model, the values for these variables are: a learning rate of .95 (which is relatively low for similar industries) [56], one crew (initially) per facility, and 40 facilities.[57] Using these values as the starting point, a parametric analysis was performed to show the values required to meet the industry forecasted production.

To determine the capacity of the industry, FRA used facility registration data to identify 60 current tank car facilities capable of performing heavy retrofits. Further, FRA identified 160 tank car facilities capable of performing light modifications, which include adding a valve and bottom outlet to the jacketed CPC–1232 cars. FRA also accounts for industry concerns regarding the readiness of current tank car facilities to perform retrofit services by maintaining the ramp-up period provided by commenters. In addition to the existing capacity, FRA's model assumes that capacity will increase to a degree over time.

FRA's model indicates the 6,400 retrofits per year would require 40 facilities to dedicate one crew to these retrofits. As a result, the remaining capacity (60 total facilities identified by FRA) would focus on the normal workload including requalifications, bad order repairs, and reassignments. As a result, FRA's model assumes:

- 40 facilities capable of heavy retrofits. FRA selected this number as a conservative estimate—in reality the number of facilities dedicated to heavy retrofits may be higher. It accounts for industry concerns regarding the readiness of current tank car facilities to perform retrofit services;
- A new crew (2 employees) will be added to each facility every 3 months, beginning in month 4;
- After 24 months, no additional resources are added; the only changes in capacity are based on the Wrights learning curve theory,[58]
- The learning rate is 0.95; and
- The learning rate is for the facility, not individuals. It is assumed the crew members all have the required skill set to perform the work.

In support of these assumptions, Figure 2 indicates the cumulative

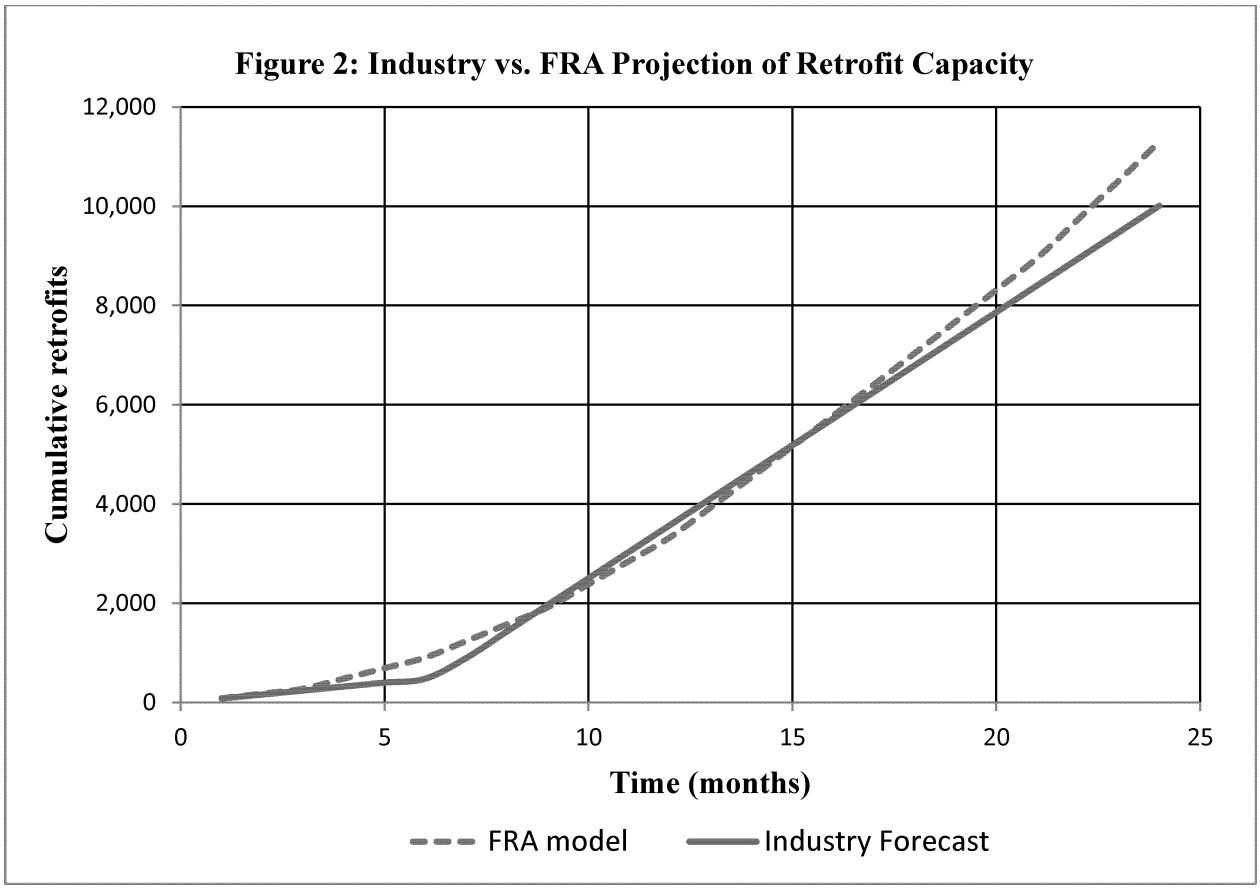
[55] Heavy retrofits include those that go beyond simply adding a valve and bottom outlet to the jacketed CPC–1232 cars.

[56] Represents a 5 percent rate of improvement. See *http://www.fas.org/news/reference/calc/learn.htm.*

[57] The variable of 40 facilities is a result of a parametric analysis. FRA also ran the model with 80, 60, and 40 facilities and 40 enabled us to recreate industry's production forecast.

[58] Every time production doubles the required resources and time, decrease by a given percentage, known as the learning rate. The learning rate for repetitive welding operations is 95 percent, meaning that when production doubles, the required resources and time are multiplied by 0.95.

production schedule for industry's model (based on The Brattle Group report), as well as FRA's model. Based on these assumptions, the FRA model indicates that a heavy retrofit capacity exceeding the industry's projection is achievable.



The most extensive retrofits (the ''heavy retrofits'') would need to take place in the initial phases of the implementation timeline, thus making these stages critical to the overall implementation timeline. Stakeholders generally agree that a 120-month timeline for light retrofits is acceptable.

Conclusion

In the NPRM the retrofit timeline was based on a single risk factor, the packing group. The packing group is a characteristic of the hazardous material. In the final rule the retrofit timeline was revised to focus on two risk factors, the packing group of the material and differing types of DOT–111 and CPC–1232 tank cars. By adding the additional risk factor, tank car type, we were able to not only account for the characteristics of the hazardous material but also those of the means of containment of that material. This revision as well as the outputs of FRA model discussed above provided an accelerated risk reduction that more appropriately addresses the overall risk. PHMSA and FRA also modified the overall length of the retrofit to account for issues raised by commenters. The rationale for the change in retrofit schedule is discussed in further detail in the RIA for this final rule.

Based on the commenters' input and additional analysis, in this final rule, PHMSA and FRA are adopting a packing group- and tank car-based implementation timeline for the retrofit of existing tank cars to the NPRM's Option 3 standard when used as part of HHFT. This risk-based retrofit schedule will be codified in authorized packaging section in part 173, subpart F of HMR and the prescriptive retrofit standard is detailed in *§ 179.202–13.* This timeline is based on public comment, the FRA modeling output and historical performance of the rail industry dealing with retrofit requirements. This timeline accounts for an initial ramp-up period as well as incremental improvements based on a learning curve throughout the implementation timeline. The implementation timeline adopted is outlined in the following table:

TABLE 21—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 (DOT–111)

[Tanks for Use in HHFTs]

Tank car type/service	Retrofit deadline
Non Jacketed DOT–111 tank cars in PG I service	(January 1, 2017*) January 1, 2018.
Jacketed DOT–111 tank cars in PG I service	March 1, 2018.
Non-Jacketed CPC–1232 tank cars in PG I service	April 1, 2020.
Non Jacketed DOT–111 tank cars in PG II service	May 1, 2023.

TABLE 21—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 (DOT–111)—Continued

[Tanks for Use in HHFTs]

Tank car type/service	Retrofit deadline
Jacketed DOT–111 tank cars in PG II service	May 1, 2023.
Non-Jacketed CPC–1232 tank cars in PG II service	July 1, 2023.
Jacketed CPC–1232 tank cars in PG I and PG II service** and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025.

*The January 1, 2017 date would trigger a retrofit reporting requirement, and tank car owners of affected cars would have to report to DOT the number of tank cars that they own that have been retrofitted, and the number that have not yet been retrofitted.

**We anticipate these will be spread out throughout the 120 months and the retrofits will take place during normal requalification and maintenance schedule, which will likely result in fleet being retrofit sooner.

Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, PHMSA invited public comment twice (the September 6, 2013, ANPRM and August 1, 2014, NPRM) on retrofit timeline considerations, including any cost or benefit figures or other factors, alternative approaches, and relevant scientific, technical and economic data. Such comments aided PHMSA and FRA in the evaluation of the proposed requirements. PHMSA and FRA have since revised our proposed retrofit timelines to address the public comments received.

PHMSA and FRA have made regulatory decisions within this final rule based upon the best currently available data and information. PHMSA and FRA are confident that retrofits can be accomplished in the revised timeline adopted in this final rule. However, PHMSA and FRA will continue to gather and analyze additional data. Executive Order 13610 urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. Consistent with its obligations under E.O. 13610, *Identifying and Reducing Regulatory Burdens,* PHMSA and FRA will retrospectively review all relevant provisions in this final rule, including industry progress toward meeting the established retrofit timeline.

To this end, the first phase of the timeline includes a January 1, 2017 deadline for retrofitting non-jacketed DOT–111 tank cars in PG I service. If the affected industry is unable to meet the January 1, 2017 retrofit deadline a mandatory reporting requirement would be triggered. This reporting requirement would require owners of non-jacketed DOT–111 tank cars in PG I service to report to Department of Transportation the following information regarding the retrofitting progress:

- The total number of tank cars retrofitted to meet the DOT–117R specification;
- The total number of tank cars built or retrofitted to meet the DOT–117P specification;
- The total number of DOT–111 tank cars (including those built to CPC–1232 industry standard) that have not been modified;
- The total number of tank cars built to meet the DOT–117 specification; and
- The total number of tank cars built or retrofitted to a DOT–117, 117R or 117P specification that are ECP brake ready or ECP brake equipped.

While this requirement applies to any owner of non-jacketed DOT–111 tank cars in PG I service, the Department of Transportation would accept a consolidated report from a group representing the affected industries. Furthermore, while not adhering to the January 1, 2017 retrofit deadline triggers an initial reporting requirement, it would also trigger a requirement which would allow the Secretary of Transportation to request additional reports of the above information with reasonable notice.

C. Speed Restrictions

Speed is a factor that contributes to derailments. Speed can influence the probability of an accident, as it may allow for a brake application to stop the train before a collision. Speed also increases the kinetic energy of a train resulting in a greater possibility of the tank cars being punctured in the event of a derailment. The kinetic energy of an object is the energy that it possesses due to its motion. It is defined as the work needed to accelerate or decelerate a body of a given mass.

$Kinetic\ Energy = \frac{1}{2}\ (Mass) \times (Velocity)^2$

Based on this calculation, given a fixed mass, if an accident occurred at 40 mph instead of 50 mph, we should expect a reduction of kinetic energy of 36 percent. After consultations with engineers and subject matter experts, we can assume that this would translate to the severity of an accident being reduced by 36%. A slower speed may also allow a locomotive engineer to identify a safety problem ahead and stop the train before an accident occurs, which could lead to accident prevention.

A purpose built model developed for FRA by Sharma and Associates, Inc. was used to simulate a number of derailment scenarios to evaluate the survivability of the tank cars proposed in the NPRM equipped with different brake systems and operating a range of speeds. The results of the simulations were the most probable number of tank cars derailed and punctured. The results were used to calculate the effectiveness of the tank car enhancements, speed reduction and brake systems individually in in combination with one or both of the other parameters. The model and simulation are discussed in detail in the March 2015 letter report prepared by Sharma and Associates, Inc. This letter report is available in the docket for this rulemaking.

As tank car enhancements, brake systems, and speed are interrelated aspects of this rulemaking and can have an effect on each other, various combinations of these variables were evaluated by FRA modeling. For example, by modifying the variables of speed (30 mph-50 mph), tank car enhancements (shell thickness, steel type, jacketing and head shielding), and braking (TWEOT, DP and ECP), FRA was able to create a matrix which could compare the effectiveness and benefits of numerous combinations of these variables. The table below describes the speeds that were evaluated with the various combinations of tank car enhancements and braking systems.

TABLE 22—SPEEDS EVALUATED IN THE FRA'S PURPOSE BUILT MODEL

Speeds evaluated	Description
50 mph	Proposed maximum speed.
40 mph	Proposed maximum speed in High-Threat Urban Areas.

TABLE 22—SPEEDS EVALUATED IN THE FRA'S PURPOSE BUILT MODEL—Continued

Speeds evaluated	Description
30 mph	Speed in the range at which most of derailments under consideration in this rulemaking occurred.

Given the data from FRA and Sharma & Associates, PHMSA anticipates the reductions in the speed of trains that employ less safe tank cars, such as the non-jacketed DOT–111 tank car, will prevent fatalities and injuries and limit the amount of damages to property and the environment in an accident. Simulation results indicate that limited safety benefits would be realized from a reduction in speed as the tank car fleet is enhanced as proposed in this NPRM. Please refer to the RIA for a detailed analysis of the impact of speed on the number of cars derailed and punctured when paired with a range of tank car enhancements and braking options.

In response to the Secretary Foxx's *Call to Action,* the rail and crude oil industries agreed to consider voluntary operational improvements, including speed restrictions in high consequence areas. As a result of those efforts, railroads began operating certain trains at 40 mph on July 1, 2014. This voluntary restriction applies to any ''Key Crude Oil Train'' with at least one non-CPC 1232 tank car or one non-DOT specification tank car while that train travels within the limits of any high-threat urban area (HTUA) as defined by 49 CFR 1580.3.

In the August 1, 2014, NPRM, PHMSA and FRA proposed to add a new § 174.310 to include certain operational requirements for a HHFT. Among those operational requirements was a proposal to limit the speed of an HHFT. Specifically, the NPRM proposed to add a new § 174.310 to Part 174—Carriage by Rail that would establish a 50-mph maximum speed restriction for HHFTs. This 50-mph maximum speed restriction for HHFTs was generally consistent with the speed restrictions that the AAR issued in Circular No. OT–55–N on August 5, 2013.

In § 174.310(a)(3), PHMSA also proposed three options for a 40-mph speed restriction for any HHFT unless all tank cars containing Class 3 flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car. The three 40-mph speed limit options are as follows:

Option 1: 40-mph Speed Limit in All Areas

All HHFTs are limited to a maximum speed of 40 mph, unless all tank cars containing flammable liquids meet or exceed the proposed performance standards for the DOT Specification 117 tank car.

Option 2: 40-mph Speed Limit in Areas With More Than 100,000 People

All HHFTs—unless all tank cars containing flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while operating in an area that has a population of more than 100,000 people.

Option 3: 40-mph Speed Limit in High-Threat Urban Areas (HTUAs)

All HHFTs—unless all tank cars containing flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while the train travels within the geographical limits of HTUAs.

In addition, PHMSA proposed to add a new § 174.310(a)(3)(iv) to Part 174—Carriage by Rail that would prohibit a rail carrier from operating HHFTs at speeds exceeding 30 mph if the rail carrier does not comply with the proposed braking requirements set forth in the Advanced Brake Signal Propagation Systems section of the NPRM. The intention of this requirement was to further reduce risks through speed restrictions and encourage adoption of newer braking technology while simultaneously reducing the burden on small rail carriers that may not have the capital available to install new braking systems.

On the issue of speed restrictions, PHMSA received public comments representing approximately 90,821 signatories. Comments in response to the NPRM's speed restrictions were wide ranging, with comments both supporting and opposing speed restrictions. Some commenters supported the speed restrictions explicitly as they were proposed in the NPRM. Other commenters opposed the NPRM's speed restrictions and proposed alternatives, such as different speed limits or different geographical standards for use in determining where a speed limit is applicable. Further, many commenters did not directly support or oppose any of the proposed speed restrictions, but rather chose to comment generally. Below is a table detailing the types and amounts of commenters on the speed proposals.

TABLE 23—COMMENTER COMPOSITION: SPEED COMMENTS

Commenter type	Signatories
Non-Government Organization	85,023
Individuals	5,475
Industry stakeholders	265
Government organizations or representatives	58
Totals	90,821

Overall, the comments of citizens, environmental groups, tribal communities and local government representatives supported more restrictive speed limits. These comments were essentially focused on how speed restrictions would provide safety benefits to local communities or the environment. Referencing data from the NPRM, these groups expressed concerns that derailments and releases of crude oil and ethanol present public safety risks and have occurred at lower speeds than the speed limits proposed in NPRM. Environmental groups and affiliated signatories, in particular, voiced concerns that releases of hazardous materials in derailments could have far-reaching adverse impacts on environmental quality, including water quality and biological diversity. Some commenters asked PHMSA to consider making the proposed speed restrictions applicable to specific environmental areas, such as in the vicinity of water resources or national parks. In illustration of these viewpoints, Clean Water Action has stated:

> The agencies' promotion of a 40 miles per hour speed, when in fact nine of the major 13 train accidents (Table 3 of the NPRM) occurred with speeds under 40 miles per hour does not seem justified nor is it in the public interest. Fire resulted in 10 of the 13 accidents, three of which were involved in speeds over 40 miles per hour and five of which were between 30 miles per hour and 40 miles per hour. The 6 accidents involving crude oil resulted in over 1.2 million gallons of oil being spilled [. . .] Clean Water Action encourages the agency to analyze reducing travel speeds to 30 mph and lower. [. . .] Clean Water Action respectfully encourages the agency to examine additional speed restrictions in areas near public drinking water supplies and sensitive environments.

Three entities representing tribal communities, the Tulalip Tribes, the Prairie Island Indian Community and the Quinault Indian Nation, expressed specific concerns with regard to the speed restrictions proposed in the August 1, 2014, NPRM. The Tulalip Tribes noted that ''[t]he maximum speed limit for the trains should not be higher than the maximum speed the rail cars

can survive in the case of an accident. Only lowering the speeds to 40 miles per hour is inadequate to protect life and property.'' The Prairie Island Indian Community supported this viewpoint and expressed concern noting the proximity of a crude oil route to their primary residential area and gaming enterprise. They continued that they ''would like to see the non-enhanced HHFT trains slowed down even further, to 30 miles per hour through residential areas or through areas with critical or sensitive infrastructure (like nuclear power plants).'' Finally, the Quinault Indian Nation conveyed their support of a 40-mph restriction in all areas with further research being completed on the benefits of a 30-mph restriction in all areas.

In addition, some individual citizens, environmental groups, and local communities expressed concern that speed restrictions might protect some cities and towns while potentially leaving others exposed to safety risks. Consequently, many individual citizens, environmental groups, and local government representatives supported Option 1, the 40-mph speed limit for HHFTs in all areas, or proposed an alternative lower speed limit to be applied as a nation-wide speed limit. These commenters did not address for the costs of implementing Option 1; rather, they emphasized that Option 1's geographical standard (''all areas'') is the most protective, and most beneficial, of the three speed options proposed and would benefit all communities, large and small. As Earthjustice, Forest Ethics, Sierra Club, et al. have expressed:

> Imposing a 40 m.p.h. speed limit only in the largest cities or 'high-threat urban areas' would be far less protective of the public than requiring safer speed limits in all populated and sensitive areas. First, the option that would focus speed restrictions on areas with more than 100,000 people excludes far too many populated areas that [are] in harm's way. For example, many U.S. cities that have experienced dangerous and potentially deadly HHFT derailments would not be covered by safer speed limits using this threshold, including Lynchburg, Virginia (78,000 people); Painesville, Ohio (20,000 people); and Vandergrift, PA (5,000 people).

Comments from rail network users and operators generally supported less restrictive speed limits. They were essentially concerned with the cost impacts of the proposed speed restrictions. In illustration of these potential cost impacts, the rail network users and operators provided some industry-specific data and analysis on the detrimental effects to network fluidity and the additional costs that would result from the proposed speed restrictions. Overall, these commenters and other stakeholders stated that speed restrictions would lead to: (1) Increased congestion; (2) slower or less predictable delivery times for various products, including crude oil, ethanol, and agricultural commodities; (3) increases in the number of tank cars required to ensure consistent timely delivery service due to increases in transit times; (4) increased costs to shippers and carriers; (5) constrained investments in the rail network's infrastructure and capacity due to reduced rail carrier revenues; (6) diversions of crude oil and ethanol transport to other modes of transport; and (7) slower passenger or commuter rail service.

Several commenters stated that the proposed speed restrictions would result in additional congestion. These commenters emphasized that the rail network is already congested and has ''fluidity'' issues. Dow and the DGAC suggested that the proposed speed restrictions could inadvertently increase the risk of incidents due to congestion. According to multiple commenters, increased congestion and subsequent reductions in network fluidity could ''ripple'' across the rail network and would affect various commodities that are transported by rail, not just crude oil and ethanol.

PHMSA received comments from a coalition of agri-business organizations that have been affected by ''service disruptions'' and ''severe backlogs,'' including the Agricultural Retailers Association, National Corn Growers Association, U.S. Dry Bean Council, and various state associations. According to these commenters, the agricultural sector has succeeded at producing agricultural commodities, such as grain and oilseed, at ''record or near-record'' levels, but faces difficulty in making timely deliveries due to increased demand for freight rail service. This increased demand is due in part to ''non-agricultural segments of the U.S. economy,'' such as crude oil production, and has caused a relative scarcity of rail service supply and competition among shippers seeking to use rail transport. These commenters have stated that the NPRM's proposed speed restrictions would further strain the transport of commodities.

Affirming these commenters' concerns, the Energy Information Administration (EIA) has stated that rail traffic has increased by 4.5 percent from January through October 2014 compared to the same period in 2013. Over the same period, carloads of crude oil and petroleum products have increased 13 percent, and these shipments of crude oil and petroleum are occurring in the parts of the U.S. where there is also strong demand to move coal and grain by rail.[59] Along with crude oil shippers, shippers of coal, grain, ethanol, and propane have expressed concerns that rail service has been slow.

In response to these congestion issues, the Surface Transportation Board (STB) called hearings in April and September 2014 to address rail ''service problems,'' and in October, STB required ''weekly data reports'' from all Class I railroads.[60] [61] The EIA information and the STB's actions appear to reflect the commenters' concerns regarding the current rail transportation environment, characterized by increased demand, rail service issues, and competition among shippers of different commodities for the available rail service supply.

Among the proposed speed restrictions, many rail users and operators and other stakeholders have expressed that Option 1—a 40-mph speed limit for HHFTs in all areas—would have the greatest negative impact on network fluidity. The Independent Petroleum Association of America (IPAA) and the North Dakota Petroleum Council (NDPC) delineated how Option 1, in particular, would create a chain of effects in the rail network and increase costs to shippers or carriers:

> The consequences of the proposed 40-mph speed restriction in all areas would be significantly longer turnaround times for unit trains, thus necessitating the need to have more railcars in the shipping fleet. Longer turnaround times alone will make railcars in short supply on the first day the new rule takes effect. A 10-mph reduction in speed equates to a twenty percent increase in turnaround time (assuming 50 mph average train speed), requiring a twenty percent increase in fleet size.

Other commenters have described how transit times and costs to shippers and carriers would increase. The Alaska Railroad Corporation stated that a common route from Anchorage to Fairbanks, Alaska, would ''take an extra 69 minutes'' with a maximum speed of 40 mph. Bridger has stated that ''an increase in round-trip transit time for Bridger's unit trains from North Dakota to the East Coast from 15 days to 20

[59] *https://www.aar.org/newsandevents/Freight-Rail-Traffic/Documents/2014-11-06-railtraffic.pdf*

[60] STB News Releases. Available online at: *http://www.stb.dot.gov/newsrels.nsf/13c1d2f25165911f8525687a00678fa7/b9b95d1200b9d81985257cad006a133a?OpenDocument* and *http://www.stb.dot.gov/newsrels.nsf/13c1d2f25165911f8525687a00678fa7/037f6ab62281bba985257d380068208a?OpenDocument*

[61] STB Decision Document. Available online at: *http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/43850?OpenDocument*

days will increase the cost per barrel [. . .] by 33%.'' In addition to impacting rail carriers and oil and gas producers, the proposed speed restrictions could impact a wide variety of shippers. The Council on Safe Transportation of Hazardous Articles (COSTHA) relayed that one of its members, a large manufacturer and distributor of consumer products, estimated increased costs of $80 million annually to its operations alone due to the proposed speed restrictions.

Rail users and operators predicted that the proposed speed restrictions would constrain their ability to invest in the rail network's infrastructure (*i.e.* add capacity) at a time when capacity is already stressed. Adding capacity would be one way in which the railroads might seek to counteract the potential network fluidity impacts resulting from the proposed speed restrictions. Union Pacific Railroad Company has stated that investments to expand capacity are risky, expansions require 2–3 years or more to complete, and the decision to invest depends significantly on the ''ability to generate returns at reinvestible levels.'' Thus, if the proposed speed restrictions have a significant impact on revenues or returns, railroads have implied that they might not be capable of investing in the rail network's infrastructure at a rate that sufficiently addresses recently increased demand for rail transport. Railroads have also stated that they have been investing greatly in the rail network's infrastructure, but the costs of adding capacity have increased in recent years. Thus, according to the railroads, the proposed speed limits would increase costs in a business environment that is already characterized by increasing costs, which stresses the railroad's ability to make new capital investments and add capacity.

Rail users and operators and other stakeholders have projected that reduced network fluidity due to speed restrictions could result in rail-to-highway diversions or other modal shifts. As the American Association of Private Rail Car Owners (AAPRCO) commented, ''Since the railroad network is already near or over capacity in many places, and consists overwhelmingly of single and double-track lines, widespread, new speed restrictions would have a major impact [...]. The impact in some cases could be diversion of freight to less-safe highways.'' Commenters have stated, if the proposed speed restrictions were to negatively influence rail network fluidity, some crude oil and ethanol transport by rail would be diverted to highway transport, and this would expose users of the nation's highways to increased flammable cargos transported by trucks.

Rail users and operators have stated that the proposed speed restrictions and subsequent reductions in network fluidity would have adverse effects on passenger or commuter rail, and they state that network fluidity is already stressed for these types of rail. The National Railroad Passenger Corporation (Amtrak) has commented:

> Amtrak believes that any significant slowing of the general railroad system could have an adverse effect on the performance of intercity passenger rail service, which has already been slowed by the recent increase of freight traffic, including the increase in the number of Key Crude Oil Trains.

Similarly, the Sao Joaquin Partnership has contextualized this effect for commuters, stating:

> Overly restrictive speeds will reduce the fluidity of the rail network and may reduce rail capacity for both people and freight. Passenger rail service via ACE Train carries over 1 million riders from Stockton to San Jose each year servicing major technology employers in Silicon Valley providing high wage opportunities for San Joaquin residents. Slowing freight will delay transit along this important trade rail corridor.

Thus, if the proposed speed restrictions affect the performance of commuter trains, adverse impacts on labor output might also occur.

Regarding industry data or projections, PHMSA often times could not corroborate the data provided by industry stakeholders. Some commenters did not supply data, while others supplied only limited data. PHMSA made efforts to acquire and analyze different data that was required for the RIA and the rulemaking's decision-making process.

Despite having voiced some cautions about speed restrictions, some rail network users and operators expressed their support for the voluntary speed restrictions that were agreed upon by industry members as a result of Secretary Foxx's *Call to Action* and subsequent *Letter to the Association of American Railroads* published on February 21, 2014.[62] These voluntary speed restrictions are generally consistent with the proposed 50-mph maximum speed limit and Option 3, the 40-mph speed limit in HTUAs. Notably, Option 3 had substantial support among the rail network users and operators and related trade associations. Some commenters concluded that all proposed speed restrictions would have negative impacts on industry, but, if a speed restriction were to be implemented, Option 3 should be implemented as it would minimize these negative impacts.

Regarding Option 2, the 40-mph speed limit in areas with a population of 100,000 or more, commenters raised additional concerns. One commenter stated that the risk to a population from a train accident depends less on the size of the population in a given area than on the proximity of that population to the railway. Thus, Option 2 might not accurately address the true number of people threatened by railway accidents. The Kansas City Southern Railway Company stated that the term ''area'' is ''unacceptably vague,'' and Option 2 is therefore ''unworkable.'' This concern was echoed by other commenters.

Some commenters expressed that Option 2 would also adversely impact network fluidity. While significantly less restrictive in a geographical sense than Option 1, some commenters, such as Amsted Rail and the National Shippers Strategic Transportation Council, still considered Option 2 to be overly restrictive or costly.

Some commenters considered Option 2 to be an acceptable ''compromise'' between competing concerns for the efficiency of the rail transportation system and enhanced safety. According to the State of Minnesota:

> Option 1, a 40 MPH speed limit in all areas, would have extensive negative effects on the shipment capacity, reliability, cost, and overall system velocity for Minnesota and its market connections. Option 2, a 40 MPH limit in areas with more than 100,000 people, would be an acceptable limit for trains using tank cars not conforming with the improved performance specifications, and would put relatively limited strain on system velocity and capacity compared to Option 1. The cost benefit analysis supports this compromise order.

Nevertheless, relatively few commenters expressed support for Option 2 as proposed in the NPRM. Comparatively, there was much wider support for Option 1 and Option 3 as proposed in the NPRM, with different groups of commenters expressing their respective support for each.

Regarding the NPRM's 30-mph speed limit, some commenters were in support, echoing the rationale that reduced speeds enhance the safety profile of conventional braking systems. Other commenters thought that the 30-mph speed limit should be adopted, but asserted that it would be more appropriate to make it a requirement for all tank cars that did not meet or exceed the standards of Specification DOT–117. Different commenters asked that the

[62] Available online at: *http://www.dot.gov/briefing-room/letter-association-american-railroads*

tank cars without enhanced braking systems be required to travel at speeds under 30 mph, such as 20 mph or 18 mph. Multiple concerned citizens asked that a 30-mph speed limit be required for all HHFTs, irrespective of their braking systems.

Some commenters were opposed to the 30-mph speed limit. These commenters either opposed speed restrictions in general or they supported higher or less restrictive speed limits. For many rail users and operators and other stakeholders, the 30-mph speed limit appeared to be unnecessary in light of the 50-mph maximum speed limit and the 40-mph speed limit in HTUAs, which have already gained support as voluntary speed restrictions for certain tank cars transporting crude oil. Further, multiple commenters pointed out that some of the enhanced braking systems proposed in the NPRM—namely, two-way EOT devices and DP braking systems—are already widely adopted by industry. If two-way EOT devices and DP braking systems are already widely adopted, the 30-mph speed limit would not be generally applicable to HHFTs, unless the 30-mph speed limit also required HHFTs to equip and/or operate ECP braking systems. For more information regarding ECP braking systems, please see the Braking Section of the final rule.

In addition to the aforementioned comments, PHMSA received other comments in relation to speed restrictions. These comments have been grouped together where appropriate and paraphrased.

Response to Comments Related to Speed Restrictions

As a safety organization, PHMSA works to reduce the safety risks inherent in the transportation of hazardous materials in commerce by all modes of transportation, and in this rulemaking, has focused its efforts on the safety of the transportation of large quantities of Class 3 flammable liquids by rail. To demonstrate that speed restrictions relate directly to safety risks, PHMSA has provided data to demonstrate the relationship between speeds, kinetic energy, tank car punctures in a derailment, and subsequent releases of hazardous material into the environment (See RIA). As a result of the Sharma modeling, PHMSA agrees with the commenters' concerns that derailments and releases of hazardous material could have adverse impacts on public safety and the environment and has proposed to reduce safety risks through the implementation of speed restrictions.

In addition to demonstrating that its proposed speed restrictions will benefit public safety, PHMSA must evaluate the impact of its regulations on diverse stakeholders. In some cases, PHMSA is required by law to conduct and publish a cost/benefit analysis, among other legal requirements. Therefore, while some of the proposed speed restrictions are more restrictive and may lead to greater safety benefits than others, PHMSA must consider concurrently the cost of implementing each proposed speed restriction and evaluate the net effect on a diverse set of stakeholders. PHMSA must also consider the costs and benefits to the various stakeholders of alternatives. As such, the costs imposed on industry and society at large by the proposed speed restrictions are an important factor in our regulatory analysis and decision-making.

PHMSA believes that an overly restrictive speed limit would present costs that outweigh benefits, and this was echoed by many commenters. These commenters expressed the outlook that the proposed speed restrictions would present significant new costs, caused primarily by substantial negative effects on rail network fluidity. As a result of its understanding of commodity flows and rail network fluidity, PHMSA agrees that speed restrictions could result in: An increase in the number of tank cars needed to ensure consistent delivery service due to increases in transit or ''turn'' times; increased congestion; slower or less predictable delivery times for some products transported by rail, including crude oil, ethanol, and agricultural commodities; slower passenger or commuter rail service; and increased costs to shippers and carriers. Moreover, if an overly restrictive speed limit were codified in the final rule, the negative effect on network fluidity could become an indefinite burden on carriers, shippers, rail passengers, and other stakeholders, since adding capacity to the rail network would likely be costly, time-intensive, and in some cases not feasible.

Therefore, if the proposed speed restrictions were to significantly hinder rail network fluidity, PHMSA believes that some diversion of crude oil and ethanol transport to highways could occur. Given substantial rail-to-truck diversions, the proposed speed restrictions might also lead to increased safety risks in the wider transportation system, especially the highway transportation system, which could in turn result in increased highway accidents involving Class 3 flammable liquids and increased costs related to responding to or mitigating highway accidents. In other words, the proposed speed restrictions could shift safety risks from rail transportation to highway transportation. PHMSA has taken this into consideration and generally agrees with this line of reasoning as presented by commenters.

Many concerned citizens and local communities stated that rural areas or small towns should have the same speed restrictions and safety protections as highly populated areas. This is a valid statement, which PHMSA considered. However, in terms of potential injuries and fatalities, PHMSA believes that the damages from a derailment in a densely populated area are more likely to be catastrophic, than damages from a derailment in a less densely populated area. Further, the application of speed restrictions to densely populated areas is less costly because only a small portion of the rail network is located within the limits of these areas and railroad operating practices already account for other kinds of restrictions, *e.g.,* railway crossings and signals, in urban areas.

PHMSA determined that there is a trade-off between the safety benefits of the proposed speed restrictions and the costs incurred by rail network operators and users, including offerors, tank car manufacturers, tank car-related businesses, rail carriers, rail passengers, and consumers of products transported by rail. PHMSA found that the proposed speed restriction that offers the greatest safety benefits is also the most costly; conversely, the least costly speed restriction offers the least safety benefits.

To further refine this analysis, PHMSA has focused its attention on identifying the proposed speed restriction that confers the greatest amount of benefit per dollar of cost. PHMSA has determined that Option 3 confers the greatest amount of benefits per dollar of costs, which lends support for the implementation of a 40-mph speed limit in HTUAs. See the Final RIA for detailed cost and benefit figures.

Accordingly, PHMSA has decided not to apply the 40-mph speed limit to all areas (Option 1) because this would be overly restrictive and highly costly to a variety of stakeholders, and it confers the least benefits per dollar of costs. PHMSA has also taken into consideration the fact that Option 2 has a lower benefit-cost ratio than Option 3, which lends further support for Option 3 and raises concerns about Option 2.

Regarding Option 2, PHMSA agrees with some of the commenters' concerns and acknowledges some of the potential problems presented by Option 2's geographical standard, ''an area [. . .]

that has a population of more than 100,000 people.'' Specifically, PHMSA recognizes that the size of a population does not always relate to the proximity of a population to a potential railway accident. Proximity may be a better indicator of potential damages or harm in the event of a derailment. PHMSA also recognizes that the threshold of 100,000 people may present difficulties for purposes of compliance and enforcement. Further, PHMSA reiterates that the implementation of Option 2 would be more costly and confers fewer benefits per unit of costs than Option 3. This cost/benefit analysis, the problems presented regarding the geographical standard of Option 2, and the general lack of commenter support for Option 2 as proposed, have led PHMSA to not elect to codify Option 2 in the Final Rule.

Regarding Option 3, PHMSA believes that the implementation of Option 3 would yield significant safety benefits, especially in the nation's most populated areas where derailments are more likely to be catastrophic. PHMSA also believes that the costs of implementing Option 3 are justified. PHMSA is confident that the geographical standard, HTUAs, is practical and well-defined and thus, would be understood for compliance and enforcement purposes. Namely, the HTUA designation has been codified since 2008 in 49 CFR Section 1580.3. In addition, PHMSA recognizes the importance of industry cooperation to date on the issue of a 40-mph speed limit in HTUAs. For these reasons, PHMSA is electing to adopt Option 3, a 40-mph speed limit for HHFTs in HTUAs.

PHMSA must also conduct its final rulemaking with due consideration to the scope of its proposed rulemaking. Some of the commenters suggested alternative, more restrictive speed limits that were significantly lower than the speed limits proposed in the NPRM. These speed limits cannot be adopted because PHMSA must codify regulations in its Final Rule that are reasonably aligned with what PHMSA has proposed in previous stages of the rulemaking in order to afford the public and interested parties an opportunity to comment on the agency's proposed actions.

Other commenters suggested alternative lower speed limits that are approximate or comparable to the proposed speed restrictions. For example, the City of Chicago suggested a 35-mph speed limit in HTUAs. These alternative lower speed limits that were approximate or comparable to the speed restrictions proposed in the NPRM were duly considered, but PHMSA is not electing to adopt them. PHMSA was not provided with sufficient data to demonstrate concretely that any one alternative lower speed limit would be superior to the speed restrictions proposed in the NPRM. These commenters either did not disclose how a given damage reduction estimate was formulated, or their suggestion for an alternative speed limit lacked an empirical basis.

The BLET and other commenters have stated that additional accident modeling could be conducted at different speeds, such as 30 mph. PHMSA believes additional accident modeling could help determine if alternative lower speed limits would reduce the severity of an accident more effectively than the proposed speed restrictions. In response to this and other comments about the costs and benefit calculations related to speed, further modeling was conducted from speeds of 30 mph through 50 mph (See table 22).

In contrast to alternative lower or more restrictive speed limits, some commenters suggested a different, less restrictive alternative: PHMSA should not impose new speed restrictions at all. For example, Biggs Appraisal Service has stated, ''The railroads have speed limits on every section of track that they operate. [. . .] Why put additional restrictions on the railroads when they already have systems in place that work?'' Regarding this point, PHMSA recognizes that there are FRA regulations in place pertaining to speed restrictions and track classes, and some railroads have voluntarily chosen to implement speed restrictions. However, the FRA regulations relate to track classes and do not address the specific risks of HHFTs, and the voluntary speed restrictions in place do not carry the weight of law. PHMSA believes that the increased number of derailments and accidents in recent years has demonstrated that the speed limit systems in place require enhancements, such as the proposed speed restrictions. Accident modeling data has shown that reducing speeds from 50 mph to 40 mph is an effective way to reduce safety risks, namely the number of punctures that occur in a derailment. To implement no speed restriction at all would require a deliberate decision to forego certain safety benefits.

In the NPRM, PHMSA proposed an additional speed restriction of 30 mph for tank cars that are not equipped and operated with either a two-way EOT device or a DP system. Furthermore, the NPRM proposed requirements for certain tank cars to be equipped with ECP braking systems. These proposals and related comments are discussed in the ''Advanced Brake Signal Propagation'' section below.

Various commenters expressed concerns for the environment and thought speed restrictions should be applicable in environmentally sensitive areas, such as in the vicinity of water resources or navigable waterways. In response, PHMSA affirms that our organizational mission includes protecting the environment from the risks of transporting hazardous materials in commerce. PHMSA acknowledges the importance of environmental concerns and that speed restrictions may be an effective way to protect the environment from releases of hazardous material. Releases of hazardous materials in a derailment could have significant adverse impacts in these areas. Further, these areas might not be highly populated or part of a designated HTUA and consequently, might not be protected by the proposed speed restrictions.

Citizens Acting for Rail Safety (CARS) suggested using the Environmental Protection Agency (EPA)'s definition of ''environmentally sensitive areas'' or using a pipeline safety definition, which pertains to ''areas that are unusually sensitive to environmental damage.'' PHMSA believes these sources might provide a sound basis for defining an environmentally sensitive area, or similar areas, in order to extend the use of speed restrictions and offer specific protections to the environment. However, under 49 CFR 172.820, routing analyses are required of railroads carrying certain hazardous materials. The final rule will codify these same routing requirements for railroads transporting Class 3 flammable liquids in a HHFT. By performing a routing analysis, railroads transporting flammable liquids in a HHFT will be required by the HMR to consider, among other things, ''environmentally sensitive or significant areas,'' and they must base their routing selection on the analysis. PHMSA believes this is ultimately a more effective approach to reducing risks to environmentally sensitive areas than the promulgation of speed restrictions that are specific to those areas. Further, in the NPRM, PHMSA did not propose a definition for the designation of environmentally sensitive areas nor did it propose to base speed restrictions on environmental criteria. PHMSA believes it would be outside the scope of this rulemaking to require lower speeds in these areas.

PHMSA would like to respond to other comments related to speed restrictions enumerated below.

1. Speed Restrictions Should Be Harmonized

PHMSA has cooperated and will continue to cooperate with Transport Canada and other appropriate international bodies. PHMSA seeks to harmonize the proposed operational controls whenever it is feasible and justified. As of April 23, 2014, Canada issued an Emergency Directive that established a 50-mph maximum speed limit for certain trains carrying ''Dangerous Goods,'' which is comparable to the 50-mph maximum speed limit established through the cooperation of the Department and AAR. These actions demonstrate that PHMSA and Transport Canada have already achieved harmonization in some respects.

Nevertheless, speed restrictions do not necessarily need to be harmonized between Canada and the U.S. In the final rule, PHMSA is implementing a geographical standard for speed restrictions that is specific to U.S. geography. Also, train speeds can be adjusted fairly easily, and differences in speed limits between localities in the U.S. and Canada would not present an undue burden on locomotive operators. Harmonization of speed restrictions is not essential.

2. Speed Restrictions Should Only Apply to Tank Cars Carrying Certain Hazardous Material(s); or Alternatively, to the Rail Transport of All Hazardous Materials

PHMSA typically uses the hazardous materials classes (Hazard Classes 1 through 9) to distinguish the risks of different hazardous materials. In recent years, increased crude oil and ethanol production have presented increased risks to the rail transportation system, but other types of flammable liquids could present similar risks. By defining a HHFT as a train with a continuous block of 20 or more tank cars or a total of 35 or more tank cars containing a Class 3 flammable liquid, we address the specific risks of increasing crude oil and ethanol production while also anticipating the potential for future risks presented by the increased production or transport of other Class 3 flammable liquids.

PHMSA disagrees with commenters who suggested that the proposed speed restrictions only apply to crude oil, or alternatively, only to crude oil and ethanol. PHMSA believes that Class 3 flammable liquids present similar risks and as such, basing the proposed speed restrictions on a given hazardous material's classification as Class 3 would be a comprehensive and responsive approach to mitigate these risks.

Comments suggesting that proposed speed restrictions should apply to the transport of all hazardous materials by rail were considered. However, PHMSA did not propose this in the NPRM, and this suggestion cannot be adopted in the Final Rule due to concerns that it is not reasonably aligned with what has been proposed. Moreover, the operational controls addressed in this rule, including speed restrictions, are aimed at reducing the risk and consequences of incidents involving rail shipments of Class 3 flammable liquids. The analyses, data, and relevant factors considered in developing this rule are specific to these materials. Information has not been provided to support expanding these restrictions to all hazardous materials or to justify the associated negative impacts on rail fluidity and costs.

3. PHMSA Lacked Important Data That Could Be Used To Estimate Costs or Benefits Pertinent to Speed Restrictions and/or More Cost/Benefit Analysis Should Be Conducted

Various commenters have identified factors that contribute to costs or benefits that PHMSA has not included in its cost/benefit analysis. PHMSA published a Draft RIA alongside the proposed rule to address the requirements of Executive Order 12866, to explain the basis of its cost/benefit analysis, and also to encourage stakeholder discussion of cost/benefit analyses pertinent to this rulemaking. Since the NPRM, PHMSA has improved upon its cost/benefit analyses and has published a final regulatory impact analysis in conjunction with the final rule based on comments received and data provided.

4. Speed Limits Should Apply to Trains Consisting of ''Enhanced'' Tank Cars, as Well as to Trains With One or More Tank Cars That Are Not ''Enhanced''

An ''enhanced'' tank car is one that meets or exceeds the retrofit standards or the standards set forth by Specification DOT–117. Specification DOT–117 tank cars and retrofitted tank cars have advanced technology and present less safety risks to the rail transportation system, the public, and the environment than ''legacy'' Specification DOT 111 tank cars. In addition, PHMSA believes that there should be incentives for tank car owners and lessors to retrofit or upgrade their fleet of tank cars. By retrofitting or upgrading their tank cars, a carrier can transport their tank cars at speeds above the proposed speed restrictions, and this could advantageously shorten transit times for offerors and carriers with retrofitted tank cars.

5. Speed Restrictions Could Be Lessened Over Time If Technology Improves

Technological improvements are oftentimes the ''triggering'' or ''initiating'' event for a new rulemaking or some other regulatory action. PHMSA agrees that there is a possibility that speed restrictions could be reduced or eliminated amid significant technological improvements in the rail transportation industry.

6. Speed Limits Should Apply Only to Specific Configurations and/or a Specific Number of Tank Cars, Such as a Continuous Block of 20 or More Tank Cars

PHMSA agrees with this point of view. Based on commenter feedback, we have revised the NPRM's proposed HHFT definition to comprise trains with a continuous block of 20 or more tank cars or trains with a total of 35 or more tank cars carrying Class 3 flammable liquids. In doing so, PHMSA seeks to address higher risk unit train configurations. In other words, PHMSA seeks to regulate trains that transport a substantial number of Class 3 flammable liquid-carrying tank cars while avoiding unwarranted regulation of trains that transport smaller quantities of flammable liquids in a ''manifest'' train. For additional information regarding the scope of the Final Rule, please refer to the section describing the definition of an HHFT.

7. Speed Limits Should Be Based on Track Conditions, Classes, or Quality/Integrity.

While track conditions and quality are an important part of rail safety, PHMSA believes that creating a system of speed restrictions based on these track factors is not warranted at this time. PHMSA did not propose in the NPRM to base speed limits on these factors. The commenters did not provide sufficient data to show how and to what degree new speed restrictions would relate to track conditions or quality. The commenters did not propose any specific system for the implementation of speed restrictions based on track conditions or quality.

Further, FRA regulations codified in 49 CFR part 213—Track Safety Standards already enforce a system of speed limits based on track classes. One commenter stated that the aforementioned FRA regulations render the NPRM's speed restrictions ''redundant.'' On this point, PHMSA disagrees because the proposed speed restrictions are specific to the risks of

Class 3 flammable liquids and the type, number, and configuration of tank cars in a train. The proposed speed restrictions offer additional safety benefits.

Also, the Final Rule extends the routing requirements of § 172.820 to the transport of Class 3 flammable liquids by rail in HHFTs. Under these routing requirements, railroads transporting HHFTs will be required to consider ''track type, class, and maintenance schedule'' and ''track grade and curvature,'' among other factors, in their choice of routes. Railroads moving HHFTs must base their routing decision on this analysis, effectively taking into consideration the potential problems presented by track conditions, classes, or quality.

One commenter stated that a 30-mph speed limit should be in place for the segments of track that are in use for passenger service. Trains in freight rail service and passenger rail service share significant portions of the nation's rail infrastructure, so implementing this suggestion would be overly restrictive.

8. The Proposed Speed Limits Are Based on Inadequate Geographical Standards

PHMSA considered different geographical standards in its development of the proposed speed restrictions, and commenters offered various alternative geographical standards, including references to Bureau of the Census criteria or data for urban areas. However, the commenters did not submit an accompanying cost/benefit analysis of the alternative geographical standards, and these alternatives in many cases were not adequately elaborated so that PHMSA could analyze whether or not they would be superior to the proposed speed restrictions.

The NTSB proposed the ''potential impact radius'' (PIR) model as an alternative geographical standard. NTSB likened PIR to an approach used by PHMSA's gas pipeline regulations. PIR might be an effective geographical standard for pipeline safety, but it is not clear if this standard would also be suitable for rail transportation safety. Rail transport involves a wider variety of commodities and amounts transported, which presents a wider variety of risks that are mode-specific. On this basis, PHMSA does not believe that PIR would be better than the geographical standards proposed in the NPRM. Furthermore, PHMSA believes that the HTUA designation is in fact responsive to the need for greater protections in the areas that present the greatest risks or ''potential impact.''

One commenter stated that the HTUA designation is ''irrelevant'' in the context of reducing rail safety risks, as it was designed for the identification of terrorist targets. PHMSA disagrees. The HTUA designation is also applicable to the reduction of rail safety risks because it encompasses many areas that, if they were involved in a derailment, could result in widespread damages. The likelihood that a derailment would result in catastrophic damages is greater in HTUAs than most other areas. A different commenter criticized Option 3 and the HTUA designation because it was seen as overly restrictive and includes ''dozens of areas.'' PHMSA disagrees on the basis that only approximately 7% of the rail network is located within the limits of HTUAs.

Regarding alternative geographical standards, PHMSA affirms that there are costs involved in creating new regulatory standards, potential issues with implementation and clarity, and benefits involved in consistencies between federal regulations. In this respect, the HTUA designation would be easier, more effective, and clearer to implement in accordance with a 40-mph speed limit because it has been codified since 2008 in Title 49, CFR. Accordingly, rail network users and operators already have a compliance history with this regulation. Conversely, rail network operators are not familiar with PIR and other alternative geographical criteria, and there would be a particular cost attached to introducing novel geographical criteria.

9. Slow Rail Operations Have Already Affected U.S. Ethanol Production by Limiting the Amount of Ethanol That Can Be Transported by Rail, and the Proposed Speed Restrictions Will Negatively Impact Ethanol Transport

According to the Michigan Agri-Business Association, the Michigan Farm Bureau, and businesses in the ethanol industry, slow rail service has already impacted the ability of ethanol producers to effectively ship and deliver ethanol to consumers. To that effect, Homeland Energy Solutions has stated that the presently slow rail service has been difficult to overcome and additional speed restrictions applicable to ethanol transport will further hinder the industry, potentially causing some producers to shut down.

In response, PHMSA asserts there are many factors that might be slowing existing rail operations. Reduced speed is only one factor that might result in slow rail service. For example, the contributing factors of poor rail service might include the rapid increase in the production and transport of crude oil and subsequent displacement of other commodities in the rail system. In such a case, poor service could not necessarily be attributed to PHMSA's proposed speed restrictions. Nevertheless, PHMSA is also concerned with the impact of the proposed speed restrictions on rail network fluidity, and seeks to limit their potential negative effects.

The AAR proposed and implemented voluntary speed restrictions to mitigate the risks of crude oil transport. Thus far, these voluntary speed restrictions have not been applicable to ethanol transport by rail. When considering additional speed restrictions, PHMSA looks at cost/benefit analysis from a holistic perspective and does not give any one industry or stakeholder a preference in its analysis. PHMSA seeks to extend the safety benefits of the proposed speed restrictions to the transport of all Class 3 flammable liquids, including ethanol, as well as limit the negative effect of these speed restrictions on overall rail network fluidity and the costs borne by all industry participants, including ethanol producers.

PHMSA acknowledges that, after the final rule takes effect, the adopted speed restrictions will have a direct impact on ethanol producers and carriers. There will be an increase in burden or costs to shippers and carriers of ethanol if, prior to the rulemaking, they had moved ethanol above 50 mph. Union Pacific has stated, ''Freight trains often operate at speeds between 50 mph and 70 mph.'' Thus, freight trains could have moved ethanol above 50 mph prior to the rulemaking.

Nevertheless, commenters did not adequately relate to what degree the 50-mph maximum speed limit would decrease the actual operating speeds of HHFTs carrying ethanol. Overall, fewer commenters expressed concerns about the 50-mph speed limit than about the three 40-mph speed limits. In addition, industry cooperation with the Department has already established 50 mph as a maximum speed limit for certain trains. In Canada, Transport Canada issued an Emergency Directive in April 2014 requiring all companies to not operate a ''Key Train'' at speeds that exceed 50 mph. For these reasons, it is PHMSA's understanding that the 50-mph maximum speed limit is a common industry practice and implementing this speed limit would not drastically change the maximum speeds at which most trains carrying hazardous materials, including ethanol, operate.

In addition to the 50-mph maximum speed limit, ethanol shippers and carriers are directly affected by the 40-mph speed limit in HTUAs as a result

of the final rule. As with the 50-mph maximum speed limit, however, it is not clear to what extent HHFTs carrying ethanol would be affected. BNSF has indicated that rail speeds through population centers of 100,000 or more, which would also include all HTUAs, are already ''at or below 40 mph.'' This suggests the costs impacts of the 40-mph speed limit in HTUAs would be minimal.

For other carriers or entities within the ethanol industry, Option 3 might introduce new costs to them, but PHMSA believes the costs are justified by additional safety benefits. Since Option 3 refers to a 40-mph speed limit in HTUAs, only a small portion of the rail network—around 7% of the nation's track—will be affected by this new speed restriction. On balance, Option 3 is the least costly of the three speed options proposed and concentrates its protections in the areas where a derailment is most likely to be catastrophic and safety benefits are greatest. The ability to limit the cost impacts of the proposed speed restrictions on industry, including ethanol shippers, carriers, and others, has lent support to PHMSA's decision to implement Option 3. PHMSA believes the new costs to ethanol industry participants are limited and justifiable.

PHMSA does not intend to unjustifiably introduce costs into the operations of stakeholders, especially those who qualify as small businesses or small entities. For this reason, and in compliance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), PHMSA must conduct a regulatory flexibility analysis addressing the rulemaking's economic impact given that the rulemaking is likely to ''have a significant economic impact on a substantial number of small entities.'' The rulemaking's RFA demonstrates that the impact to small entities as a result of this rulemaking will be limited and should not cause any small entities to cease operations. Please refer to the RFA section for additional explanation of the final rule's impact on small entities.

10. Voluntary Speed Restrictions Are Sufficient and Should Not Be Codified; or Voluntary Speed Restrictions Are Insufficient and Should Be Codified

PHMSA believes the speed restrictions should be codified. Recommended practices, such as voluntary speed restrictions, do not carry the weight of law. Recommended practices do not provide legal recourse in the event a railroad moves an HHFT at speeds exceeding voluntary speed restrictions thus increasing the likelihood of catastrophic damage in a train accident. Further, without the codification of these requirements, the speed restrictions could be lifted altogether in a premature manner, increasing safety risks. Codifying the speed restrictions will ensure that the safety benefits of speed restrictions are realized indefinitely and cannot be prematurely lifted without the appropriate procedural requirements. Further, this codification allows PHMSA and FRA to ensure compliance by exercising oversight and taking appropriate enforcement actions.

11. Speed Restrictions Could Have Unintended Consequences, Such as Increased Delays to Vehicles Stopped at Railroad Crossings or Carriers Choosing Not To Configure a 20th Tank Car in Order To Avoid Speed Restrictions

Regarding increased delays to vehicles stopped at railroad crossings, commenters did not provide specific data regarding the time or cost burden of this kind of delay. PHMSA recognizes this could be a consequence of the proposed speed restrictions, but is unable at this time to quantify the time burden or cost of increased vehicle delays at railroad crossings. PHMSA expects the cost of these delays would not be substantial.

Regarding train configurations and the proposed speed restrictions, PHMSA seeks to limit the implementation of speed restrictions to train consists with a substantial number of tank cars carrying Class 3 flammable liquids. In practical terms, PHMSA seeks to limit the effect of the proposed speed restrictions so that ''manifest'' trains would not be regulated to the same degree as a unit train of Class 3 flammable liquid.

PHMSA has revised its definition of an HHFT in response to commenter feedback on typical train configurations involving Class 3 flammable liquids, including crude oil and ethanol. The revised definition would allow rail carriers to configure up to 34 tank cars carrying flammable liquids so long as there are not 20 or more tank cars in a continuous block. A train that distributes hazmat-carrying tank cars (*i.e.,* configures them to limit the size of continuous blocks) in a consist would most likely pose a lower risk than a train with continuous blocks of cars containing hazmat. Moreover, the threshold of 35 or more total tank cars prevents a rail carrier from being able to transport an essentially unrestrained quantity of Class 3 flammable liquid tank cars by continually and purposefully avoiding the configuration of a 20th tank car in a continuous block. As such, the revised HHFT definition will limit the impact of the proposed speed restrictions on ''manifest'' trains.

12. Speed Restrictions Will Influence Externalities, Such as Noise Disturbances

PHMSA agrees that the proposed speed restrictions might result in externalities, such as reduced noise disturbances. PHMSA has taken into consideration the most significant externalities that would result from this rulemaking. PHMSA's review of the comments, analysis of costs and benefits, and coordination between regulatory, economic, and technical subject matter experts has facilitated a critical evaluation of the NPRM's proposed speed restrictions.

The following table summarizes the NPRM's proposed speed restrictions and presents some of PHMSA's analysis as to whether or not a given speed restriction would be an effective regulation.

TABLE 24—ANALYSIS OF SPEED RESTRICTIONS

The NPRM's proposed speed restrictions	Analysis
Option 1: 40-mph speed limit in all areas.	Option 1 was the most restrictive of the three 40-mph speed limits proposed. Option 1 was the most costly and confers the least benefits per dollar of costs. Also, the costs presented by Option 1 significantly outweighed the benefits of Option 1 in PHMSA's cost/benefit analysis, even when using the highest value in the benefit range to evaluate Option 1's net effect. Further, PHMSA believes the effect of Option 1 on rail network fluidity could be substantial.
Option 2: 40-mph speed limit in areas with more than 100,000 people.	Commenters stated that Option 2's geographical standard is inadequate and unworkable. There was relatively little explicit support for Option 2 among commenters. Option 2 confers significantly less benefits per unit of costs than Option 3.

TABLE 24—ANALYSIS OF SPEED RESTRICTIONS—Continued

The NPRM's proposed speed restrictions	Analysis
Option 3: 40-mph speed limit in High-Threat Urban Areas (HTUAs).	Option 3 would yield significant safety benefits, particularly in the nation's densely populated areas, which present an increased likelihood of the occurrence of a catastrophic event. Likewise, Option 3 confers the most safety benefits per unit of costs. In addition, the geographical designation of High-Threat Urban Area (HTUA) is workable, defined, and codified in Part 1580 in Title 49 CFR.
50-mph maximum speed limit for HHFTs.	The 50-mph maximum speed limit for HHFTs does not introduce new costs to stakeholders that offer or ship crude oil. A 50-mph speed limit for HHFTs is in line with widely adopted practices due to trade association and industry cooperation with regulatory bodies. It is also considerably harmonized with Transport Canada's April 2014 Emergency Directive.
30-mph speed limit for HHFTs without enhanced braking systems.	The 30-mph speed limit for HHFTs without a two-way EOT device or DP braking systems would not be generally applicable, provided that HHFTs are in compliance with the requirements for the use of these enhanced braking systems in the Final Rule. Speed limits pertinent to the use of ECP braking systems are discussed in the Braking Section of the Final Rule.

Conclusion

In the final rule, PHMSA and FRA are adopting requirements for speed restrictions for HHFTs. Specifically, this rulemaking adds a new § 174.310 to Part 174—Carriage by Rail. Section 174.310(a)(2) establishes a 50-mph maximum speed restriction for HHFTs. In addition, § 174.310(a)(2) establishes a 40-mph speed limit for HHFTs within the limits of high-threat urban areas (HTUAs) as defined in 49 CFR 1580.3, unless all tank cars containing a Class 3 flammable liquid meet or exceed the retrofit standards, the performance standard, or the standards for the DOT Specification 117 tank car provided in Part 179, Subpart D of the Hazardous Materials Regulations (HMR). The 40-mph speed limit for HHFTs within the limits of HTUAs is in line with Option 3 proposed in the NPRM.

In addition as discussed previously on April 17, 2015 FRA issued Emergency Order 30 to require that certain trains transporting large amounts of Class 3 flammable liquid through certain highly-populated areas adhere to a maximum authorized operating speed limit.[63] Under Emergency Order 30, an HHFT with at least one DOT–111 tank car (including those built in accordance with CPC–1232 loaded with a Class 3 flammable liquid) must not exceed 40 mph in HTUAs as defined in 49 CFR 1580.3. As this final rulemaking does not become effective for 60 days from publication FRA believes the restrictions in Emergency Order 30 will address an emergency situation while avoiding other safety impacts and harm to interstate commerce and the flow of necessary goods to the citizens of the United States. FRA and DOT will continue to evaluate whether additional action with regard to train speeds is appropriate.

D. Advanced Brake Signal Propagation Systems

Since the passage of the First Safety Appliance Act of March 2, 1893, freight train operations in the U.S. have traditionally relied on air brakes to slow and stop a train.[64] This conventional air brake system has proven to be reliable, but it has drawbacks. When a train is long and heavy, as is typically the case in the context of an HHFT, a conventional air brake system can easily take over one-half mile to bring a train to a stop, even with the emergency brakes applied. Moreover, the length of a train will significantly affect the time it takes for the conventional air brakes to apply to the entire consist. It can take a number of seconds for the air brake system to function as air is removed from the system to engage the brakes, beginning with the cars nearest to the locomotive and working towards the rear of the train. For example, in a 100-car train it could take up to 16 seconds as the brakes fully apply sequentially from front-to-back. This lag in air brake application time from the front to the back of the train also can result in significant in-train buff and draft forces. These in-train forces can lead to wheel damage (*e.g.* slid flat spots) and can negatively impact rail integrity as these flat spots create a vertical impact force (''pounding'') on the rails. These are major contributing factors to derailments. In-train forces resulting from the application of conventional air brakes also can directly contribute to derailments, particularly in emergency situations, as freight cars can be forcefully bunched together when the train is brought to a stop quickly. These forces may also be amplified by the longitudinal slosh effect of a liquid lading, such as crude oil or ethanol. Such factors have led PHMSA and FRA to consider advanced brake signal propagation systems as a way to improve safety in the transportation of Class 3 flammable liquids by rail, particularly with respect to longer trains transporting 70 or more tank cars loaded with Class 3 flammable liquids. These more advanced systems have the capability to stop trains more quickly and reduce the number of braking induced derailments.

Types of Brake Signal Propagation Systems Considered in the NPRM

Brake signal propagation systems are interconnected arrangements of braking components that operate together to slow or stop a train. Compared to conventional air brakes, these systems can reduce the number of cars impacted (*e.g.,* derailed or punctured), can dissipate the kinetic energy associated with train accidents, and in some instances can prevent an accident from occurring through accident avoidance. In the NPRM, PHMSA and FRA considered three advanced brake signal propagation systems that would contribute to the safe transportation of Class 3 flammable liquids when transported in bulk by rail: Two-way end-of-train (EOT) devices, distributed power (DP) systems, and electronically controlled pneumatic (ECP) braking systems.

Two-way EOT devices include two pieces of equipment linked by radio that initiate an emergency brake application

[63] See *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_2DA43BA3704E57F1958957625273D89A29FF0B00/filename/EO_30_FINAL.pdf.*

[64] The conventional air brake system was invented by George Westinghouse in approximately 1869. It relies on air pressure to apply and release the air brakes on each car in a train's consist. There is an air brake line that connects each car to an air source provided by the locomotive. When the air brakes are in the release position, the locomotive is providing air pressure to prevent the air brakes from applying. When air pressure is reduced in the system during a service application, the air brakes will apply. (Note: There are also handbrakes on each car and each locomotive and an independent brake on each locomotive. Handbrakes are not activated by a train's air brakes system. Independent brakes may be applied and released separately from the train's air brake system.)

command from the front unit located in the controlling (''lead'') locomotive, which then activates the emergency air valve at the rear of the train within one second. The rear unit of the device sends an acknowledgment message to the front unit immediately upon receipt of an emergency brake application command. A two-way EOT device is slightly more effective than conventional air brakes because the rear cars receive the emergency brake command more quickly in an engineer induced emergency brake application.

DP systems use multiple locomotives positioned at strategic locations within the train consist (often at the rear of the train) to provide additional power and train control in certain operations. For instance, a DP system may be used to provide power while climbing a steep incline and to control the movement of the train as it crests the incline and begins its downward descent. The DP system works through the control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives. DP systems are a mature technology and are in widespread use on Class I railroads, particularly those operating west of the Mississippi River. While distributed power technically is not a braking system, the additional power source in or at the rear of the train consist can provide enhanced braking for a train.

ECP brake systems simultaneously send an electronic braking command to all equipped cars in the train, reducing the time before a car's pneumatic brakes are engaged compared to conventional air brakes. They can be installed as an overlay to a conventional air brake system or replace it altogether; however, FRA regulations do require that ECP brake systems be interoperable pursuant to the AAR S–4200 standard, which allows for interchange among the Class I railroads. 49 CFR 232.603. The modeling performed for the NPRM by Sharma & Associates suggested that ECP brakes could reduce the severity of an accident when emergency braking is applied by 36 percent (meaning that 36 percent fewer cars would be expected to puncture in the event of a derailment of a 100 car train) compared to conventional air brakes.[65] Additional modeling (discussed in detail below) conducted after the NPRM, supports the finding that ECP brakes reduce the probability of punctures in the event of a derailment, although the updated modeling determined that ECP brakes provide an approximate safety benefit of 26–30 percent in terms of reduced probability of tank car punctures. PHMSA and FRA conducted additional analysis of the results provided in the updated analysis and determined that ECP brakes were almost 20 percent more effective than a two-way EOT device or DP unit when weighted based on the quantity of product spilled in a derailment.

The simultaneous application of ECP brakes on all cars in a train also significantly improves train handling by substantially reducing stopping distances as well as buff and draft forces within the train, which under certain conditions can result in a derailment. Because ECP brakes do not rely on changes in air pressure passing from car to car, there are no delays related to the depletion and recharging of a train's air brake system. These factors provide railroads with the ability to decrease congestion or to increase volume by running longer trains closer together.[66] Further, under current FRA regulations, trains relying on ECP brakes are allowed to run for longer distances between brake inspections (up to 3,500 miles), which decreases the time equipment spends out of service. *See* ''ECP Efficiencies'' discussion in the RIA. FRA's existing regulations also permit significant flexibility related to the handling of cars with inoperative brakes due to the fact that ECP braking systems allow train crews to electronically monitor the effectiveness of the brakes on each individual car in a train and provide real-time information on the performance of the entire braking system of the train.[67] ECP braking system technology also reduces the wear and tear on brake system components and can reduce fuel consumption. The combination of all these factors allows for more efficient operations, which results in ECP-equipped trains having higher utilization rates. These efficiencies are addressed in detail in the RIA, which is included in the docket.

Because U.S. railroads have traditionally relied on conventional air brakes, existing tank cars and locomotives (to a lesser extent) have not been built with ECP brake technology installed. All cars in a train, as well as locomotives, must be equipped with wiring to allow the brake system to be relayed through the entire train before the train can operate in ECP brake mode.[68] As a result, an ECP brake system is not efficient in a situation where a substantial number of cars are not equipped to handle ECP brakes. This aligns with the experiences learned from the operation of ECP-equipped trains by BNSF Railway (BNSF) and Norfolk Southern Railway (NS), which indicate that ECP braking technology can be implemented most effectively on unit trains that tend to be kept in dedicated service (*i.e.* primarily used in unit trains that are essentially transporting a single commodity, such as crude oil). Applying ECP brake systems in this manner has been demonstrated to be successful both domestically and internationally as discussed in further detail below.

Public Comments to the Brake System Proposal in the NPRM

Given the increased risks associated with an accident involving HHFTs, we specifically requested comments in the September 6, 2013, ANPRM on the use of advanced brake signal propagation systems to reduce the number of cars and energy associated with derailments. Based on comments to the ANPRM and the FRA simulation data described above, in the August 1, 2014, NPRM we proposed to require that each HHFT be equipped with an enhanced brake signal propagation system (*i.e.,* equipped with more than just conventional air brakes) along with an implementation schedule that would minimize the impacts on rail carriers. Specifically, subject to one exception, we proposed to require the following:

- HHFTs are to be equipped with a two-way EOT device as defined in 49 CFR 232.5 or a DP system as defined in 49 CFR 229.5, by October 1, 2015.
- After October 1, 2015, a tank car manufactured in accordance with proposed § 179.202 or § 179.202–11 for use in a HHFT must be equipped with ECP brakes.
- After October 1, 2015, HHFTs comprised entirely of tank cars manufactured in accordance with proposed § 179.202 and § 179.202–11 (for Tank Car Option 1, the PHMSA and FRA Designed Car, only), except for required buffer cars, must be operated in ECP brake mode as defined by 49 CFR 232.5.

[65] The estimates for ECP braking systems in the NPRM have been revised based on updated modeling from Sharma & Associates. *See* ''Letter Report: Objective Evaluation of Risk Reduction from Tank Car Design & Operations Improvement—Extended Study,'' Sharma & Associates, March 2015. The final rule relies on the updated modeling.

[66] PHMSA and FRA recognize that the outer length of trains will ultimately governed by structural factors, such as the length sidings.

[67] A train equipped with ECP brakes may depart its initial terminal with 95 percent operative brakes, whereas a train equipped with conventional air brakes must have 100 percent operative brakes at departure.

[68] This wiring could be used to by-pass a car or locomotive if it were not equipped with ECP brakes. However, the train must have a minimum of 95 percent effective brakes. See 49 CFR 232.609.

To reduce the burden on small carriers that may not have the capital available to install new braking systems, we proposed an exception. If a rail carrier does not comply with the proposed braking requirements above, we proposed that the carrier may continue to operate HHFTs at speeds not to exceed 30 mph. Additionally, we sought specific comment on the capacity of tank car and locomotive manufacturing and retrofit facilities to install advanced brake signal propagation systems, estimated costs of ECP braking systems, alternative simulations or modeling data to validate the results of the FRA commissioned analysis, and the interaction of safety and environmental benefits when coupled with speed restrictions or enhanced tank car standards. The table below details the types and amounts of commenters on the braking proposals.

TABLE 25—COMMENTER COMPOSITION: BRAKING COMMENTS

Commenter type	Signatories
Non-Government Organization	100,738
Individuals	8,622
Industry stakeholders	217
Government organizations or representatives	19
Totals	109,596

Most of the commenters support the proposed requirements for enhanced braking systems beyond conventional air brakes on HHFTs. Of those commenters who identified the braking issue in their response, approximately 98 percent of signatories specifically supported mandating ECP brakes for HHFTs. Whereas, two percent of signatories opposed specifically mandating ECP brakes for HHFTs in favor of two-way EOT devices, DP systems, any enhanced braking, or no enhanced braking.

Environmental groups, concerned public, other governmental organizations, Indian tribes, local governments, towns and cities, NGOs and trade associations were among the main groups supporting the mandating of ECP brakes for HHFTs. It should be noted that while 98 percent of signatories supported ECP brakes, these commenters largely did not provide additional data supporting the proposal in the NPRM. Some concerned public commenters supported expanding the braking proposal to require that all tank cars transporting hazardous materials be equipped with ECP brakes. In an online write-in campaign, over 3,000 public commenters state: ''[t]hree levels of brakes for tank car standards are offered but ALL tank cars carrying hazardous materials should be equipped with the highest level of brakes and brake signaling systems.''

Other concerned public, Congressional, Indian tribes and environmental group commenters expressed support for ECP brakes as proposed in the NPRM. Most stated generally that they were in favor of the most stringent and advanced brakes available for HHFTs. The Regional Tribal Operations Committee commented that the final rule must ''require state-of-the art braking systems for crude-by-rail trains to protect the public in the face of what the [NTSB] has called 'unacceptable public risks.'' Cost was not generally discussed by those commenters who supported ECP brakes, and cost did not appear to be a deciding factor in selection of a braking option for the commenters who supported use of ECP braking systems. Specifically, these commenters desired the tank car braking enhancements that would result in the greatest improvements in safety for those in proximity to the rail network as well as for environmentally sensitive areas along such routes.

Commenters such as environmental groups and state agencies supported ECP braking based on the modeling data provided by PHMSA and FRA. The Center for Biological Diversity, in its comment with almost 23,000 signatories, stated:

> Given that the ECP system would only reduce the potential for tank car punctures by 36%, it is unconscionable to allow the option of a potentially cheaper distributed power system, which would only reduce accident severity by 18%. . . . Given the imminent hazard that HHFTs pose to human health and the environment, the most effective brake system that has been shown to be readily available for these trains must be employed, and PHMSA must not offer a choice that would drastically increase the severity of accidents.

Clean Water Action supports ECP brakes in their comment stating ''[t]o slow HHFTs[,] all rail cars should be equipped with the [ECP] brake system whose effectiveness has been shown to be 36%.'' It also comments that, ''[e]ven though industry believes the ECP adds significant time and cost investment and the benefits will not be realized for months or years in the future, the technology seems to offer significant benefits such as real time monitoring, reduced wear and tear on the brake system, and fuel savings.'' Clean Water Action further noted that, ''[i]t would have been encouraging for the industry to embrace a proven technology rather than to suggest ECP offers marginal benefits,'' particularly when the increased effectiveness of DP systems is only 18 percent. The California Public Utilities Commission and California Governor's Office of Emergency Services in their joint comment also noted that the 2006 study, ''ECP Brake System for Freight Service: Final Report,'' [69] identifies a number of benefits related to the implementation of ECP braking including: reduced stopping distances up to 70 percent, reduction in undesired emergency brake applications, improved train handling, and reduced fuel consumption.

Additionally, some commenters noted that EOT devices or DP systems are already the base standard for industry and expressed concerns that codifying the requirement to equip one of those two systems would not increase safety in any significant manner. The BLET stated in its comment that, ''. . . the EOT requirement already exists in 49 CFR 232.407.'' As a result, it contended that the proposed EOT device ''requirement was picked simply to have no economic impact on railroads because they were already complying with this rule.'' The BLET noted that, ''achieving cost savings is a worthy goal,'' but urged that ''it cannot be a goal that comes at the risk of providing no additional safety benefits by preservation of the status quo.'' Further, the BLET contended that, ''[t]he use of distributed power is also currently being done for business purposes of being able to run longer, heavier trains due to more locomotive tractive effort provided at the rear or within a train.''

The Brotherhood of Maintenance of Way Employees Division (BMWED) and the Brotherhood of Railroad Signalmen (BRS) in their joint comment support ECP braking if the requirement also includes a restoration of the 1,000–1,500 mile interval for brake and mechanical inspections to be performed by a qualified inspector.

Concerned public, shippers, trade associations, other governmental organizations, and rail carriers were the main groups commenting in opposition to ECP brakes for HHFTs in favor of two-way EOT devices, DP systems, any enhanced braking or no enhanced braking. While these commenters represented a small minority of the overall number of signatories who identified braking systems in their response, several of these commenters provided cost analyses or brake system effectiveness data to compare against

[69] FRA, ''ECP Brake System for Freight Service: Final Report,'' Booz Allen Hamilton, 2006, *http://www.fra.dot.gov/eLib/Details/L02964*.

the data presented by PHMSA and FRA under the NPRM.

Comments on ECP Effectiveness

Prior to publication of the August 1, 2014, NPRM, FRA conducted simulations using the Train Energy & Dynamics Simulator (TEDS) program developed by Sharma & Associates to demonstrate the increased effectiveness of ECP brakes compared to conventional brakes, EOT devices, and DP systems. The simulations were conducted to better understand the effect on energy dissipation and stopping distance of different brake signal propagation systems. The results of these simulations suggested that advanced brake signal propagation systems, especially ECP brake systems, decrease brake signal propagation time(s) and decreased kinetic energy of a train in a derailment compared to the conventional air brake system. Many commenters in opposition to ECP brakes challenged PHMSA and FRA's effectiveness claims in the NPRM.

AAR challenged the modeling done by Sharma & Associates based on several factors. It states that the number of simulations was too limited and conducted on trains of 80 cars or less.[70] AAR's Transportation Technology Center, Inc. (TTCI) undertook its own modeling of the effect of ECP brakes, with an independent review by Applied Research Associates. According to AAR, the TTCI modeling considered additional factors that are not in the Sharma & Associates modeling. These include the force applied to cars past the point of derailment, potential for derailment to occur at different points on a train, and the variability in a train's response to different types of derailment. Using the Aliceville, AL, derailment as a proxy, TTCI concludes that the energy of the derailment would have been decreased by 12 percent had ECP brakes been used instead of the distributed power in use on that train. Utilizing simulated speeds of 30, 35, 40, 45, and 50 mph, respectively, as well as multiple advanced brake systems—such as conventional brakes with two-way EOT and head-end devices [71] and distributed power (rear, middle of the train, and buried 2/3)—TTCI's modeling suggests that a train using ECP brakes is 10.5–13.3 percent more effective as measured by the decrease in kinetic energy during the derailment, with a decrease in the number of cars expected to be derailed at 1.2–1.6 cars.

While these figures do tend to show that ECP brakes are more effective than DP systems, the figures developed by TTCI are indeed lower than those presented in the Sharma & Associates modeling. However, it is unclear what brake ratio TTCI used in its modeling.[72] The current maximum allowable brake ratio for conventional braking is 10–11 percent, depending on the car. The modeling for conventional braking that was done by Sharma & Associates used a simulated brake ratio of ten percent. Because the in-train forces are greatly reduced when using ECP brakes, AAR guidelines allow for a higher brake ratio for ECP brakes than conventional brakes. The maximum brake ratio for ECP brakes is about 13 percent. This should translate into shorter stopping distances and decreased energy in the event of a derailment for trains equipped with ECP braking systems, but it is not evident from the information provided by AAR whether TTCI accounted for the higher allowable brake ratio in its modeling.

Additionally, while TTCI ''reproduces'' certain recorded stopping distances in derailments, it does not actually simulate a derailment. Instead, the TTCI model simply calculates the energy dissipation as a train is slowed to stop when a blocking force is applied. The blocking force is intended to act as a surrogate for the force applied by the cars in a derailment, but this is a poor corollary to a derailment outcome because energy dissipation by itself is insufficient to quantify damages. It does not take into account other factors, such as location of impact and size of impactors that are of equal importance to energy. Therefore, we question the exactness of TTCI's results with respect to modeling the effectiveness of ECP brakes.

AAR also suggests that the conditional probability of release (CPR; the probability of a release if a tank car is in an accident), will also depend on the specific tank car specification selected by PHMSA. For example, if the CPR is five percent that means there will only be a five percent chance of a release from the 1.2 to 1.6 cars derailing due to the absence of ECP brakes, everything else being equal.

Union Pacific concluded that multiple remote trains (*i.e.* DP systems) have essentially the same stopping performance as ECP brakes, and that it makes little difference whether the brake commands are delivered within 2.5 seconds (using ECP) or within four seconds (using DP). Even though the delay in braking commands with ECP and DP can be as much as 4–5 seconds (a result of the difference in build-up time for the brake cylinder pressure), the difference in stop distance is ''virtually unnoticeable.'' Based on its 2009 testing, Union Pacific concluded that braking and train handling were virtually as good with DP systems as the ECP test train. Moreover, Union Pacific found that increasing its use of distributed power resulted in benefits nearly identical to using ECP braking, without the significant operating issues created by ECP brake systems. Specifically, it states that there are considerable compatibility and reliability issues with ECP brakes that make them a less effective option, such as power failures as well as hardware and software issues.

Honeywell Performance Materials and Technologies commented in opposition of ECP braking based on how ECP brake systems operate stating, ''the new design is not compatible with present fleet braking systems'' and ''[i]t is our understanding that all cars, including the locomotive, in a train would need to be equipped with the ECP brakes to be effective.'' Concerns that all cars in a train must be equipped with ECP brakes in order for the system to function was echoed by other commenters in opposition of ECP brakes. Bridger commented that ''cars equipped with ECP brakes cannot be intermixed with cars equipped with conventional airbrakes. Thus, any tank cars set out en-route for defects will be difficult to move to destination. This will slow the cycle times on the cars and may also add operational costs for the railroads in having to make special movements to 'rescue' stranded ECP equipped cars.''

BNSF submitted that the benefits of ECP brakes—in the context of avoiding the spillage or ignition of flammable liquids moved by rail—do not come close to justifying the costs, complexity and lost productivity that would result from an ECP brake requirement, especially when compared to realizing the benefits from a DP system, which is proven technology. BNSF goes on to state that a train equipped with ECP brakes, on average, would have approximately two fewer cars per train derail than a similar train equipped with DP. BNSF has experience with ECP brakes on unit trains in a captive, closed-loop environment. What BNSF has found is that the ECP braking equipment is more expensive to maintain, requires specialized skills and

[70] The initial round of simulations were, in fact, 80 car trains. For the final rule 100, 80, 50 and 20 car trains were modeled.

[71] A head-end device (also known as front-of-train unit or front unit) is placed in the locomotive. It receives data from the EOT device that is placed on the rear car of the train. In two-way EOT systems, the head-end device is able to initiate emergency braking at the rear of the train within one second. *See* 49 CFR 232.403 and 405.

[72] The braking ratio is the relation of the braking force to the weight of the car or locomotive.

shopping capabilities, and has not ever, in BNSF's experience, been successfully applied outside of a limited, closed-loop environment. BNSF goes on to say that while crude and ethanol make up five percent of its shipments they travel on 70 percent of the BNSF network. This will result in training and repair needs across a majority of their network for a commodity that is only a small fraction of their freight shipments.

Comments on Availability and Cost

The Independent Petroleum Association of America (IPAA), BNSF and Plains Marketing, LP opposed ECP brakes noting that there are only two known manufacturers of ECP brakes, and that all current sales are overseas. BNSF noted that the systems of the two manufacturers (New York Air Brake and Wabtec) are not believed to be interoperable. In addition, these manufacturers do not currently produce ECP brake components in sufficient volumes to handle this regulatory requirement. Amsted Rail stated that there are only six trains currently operating with ECP brakes in the United States.

AAR, Greenbrier, Amsted Rail, the National Grain & Feed Association, RSI and AFPM provided cost estimates per tank car for ECP brakes ranging from $5,300 to $15,000—above the PHMSA estimate of $3,000 for new construction and $5,000 for retrofits.

AAR, Bridger and AFPM provided cost estimates per locomotive for ECP brakes ranging from $20,000 to $88,000—in contrast to the PHMSA estimate of $79,000. These commenters also indicated that PHMSA underestimated the size of the affected locomotive fleet.

AAR commented that 9,849 carmen, 27,143 engineers, and 41,015 conductors would need training—above the PHMSA estimate of 4,500 engineers and 4,500 conductors. The majority of commenters in opposition to ECP brakes stated that the cost of equipping the system is too high. Additionally, many were concerned that the installation process and overlay of these braking systems is too complex. PHMSA and FRA discuss the cost-benefit analysis of ECP braking in further depth in the RIA.

Comments on Integration of ECP Brake Systems with Positive Train Control

Many commenters both in support of and opposition to ECP brakes mentioned positive train control (PTC) in their comments. PTC is a set of highly advanced technologies designed to automatically stop or slow a train before certain types of accidents occur. PTC is designed to prevent train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and movement of a train through a track switch left in the wrong position.[73] The Rail Safety Improvement Act (RSIA) of 2008 mandated an end of 2015 deadline to implement PTC across 70,000 miles of the rail network.[74] *See* ''Positive Train Control Systems,'' 75 FR 2598 (January 15, 2010), FRA Docket No. FRA–2008–0132; for further information.[75]

BNSF commented that ECP brake implementation would require a re-write of the PTC algorithm, which would then need to go through the FRA approval process. Furthermore, physical and logical interfaces between ECP brake and PTC equipment would have to be designed and tested. BNSF is not currently aware of any adverse interactions between the two systems. Additionally, it commented that rail shop capacity is already strained due to the PTC mandate, and would be further congested by a requirement for ECP brakes.

Analysis of the Final Rule Requirements Related to Advanced Brake Propagation Systems

This final rule requires all HHFTs operating in excess of 30 mph to have enhanced braking systems. The type of enhanced brake system that a railroad will be required to use is based on a refined approach that allows PHMSA and FRA to implement real brake system safety improvements by taking into consideration the amount of Class 3 flammable liquids being transported by a train as well as the type of operation that the train uses to transport Class 3 flammable liquids. At a baseline level, any train that contains a continuous block of 20 or more loaded tank cars or a total of at least 35 loaded tank cars throughout the train consist containing Class 3 flammable liquids must have in place, at a minimum, a functioning two-way EOT device or a DP system to assist in braking. Based on FRA analysis and modeling by Sharma & Associates conducted in March 2015, it is expected that a two-way EOT device or DP locomotive at the rear of a train can reduce the number of cars punctured by 13–16 percent compared to conventional air brakes. However, with longer, heavier trains it is necessary to factor in train control issues. Therefore, PHMSA and FRA have specific braking requirements for trains that are transporting 70 or more loaded tank cars of Class 3 flammable liquids at speeds in excess of 30 mph. These requirements are intended to further enhance safety based on the operations conducted for longer, heavier trains.

Any high-hazard flammable unit train (HHFUT) operating in excess of 30 mph must have a functioning ECP brake system that complies with the requirements of 49 CFR part 232, subpart G. PHMSA and FRA define an HHFUT as a single train consisting 70 or more tank cars loaded with Class 3 flammable liquids. This definition is intended to capture those operations where tank cars and locomotives are primarily used in captive service trains that are transporting large quantities of Class 3 flammable liquids (such as crude oil and ethanol) and are running in a continuous loop. The ECP braking requirement goes into effect as of January 1, 2021 for any HHFUT transporting one or more loaded tank car of a Packing Group I flammable liquid, and goes into effect as of May 1, 2023 for all other HHFUTs.

While PHMSA and FRA are establishing a requirement to implement ECP brake systems for certain operations, we recognize that the railroad industry may develop a new brake system technology or an upgrade to existing technology that is not addressed in 49 CFR part 232, subparts E (for two-way EOTs) and G (for ECP braking systems). This rulemaking is not intended to ''lock in'' the status quo with respect to ECP brake systems as the only form of brake system that can be used on unit trains operating in excess of 30 mph while transporting 70 or more loaded tank cars of flammable liquids. In the event that a new technology is developed, railroads should apply to FRA to obtain special approval for the technology pursuant to part 232, subpart F.

Finally, PHMSA and FRA believe that it makes practical sense to except trains operating at speeds not exceeding 30 mph from the requirements related to HHFUTs. This enables shortline and regional railroads and railroads without the capital necessary to equip unit trains with ECP brakes or that choose not to equip their trains with these systems to continue transporting Class 3 flammable liquids, albeit at slower speeds in order to protect public safety and the environment. It also is important to note that such railroads will be required to transport Class 3 flammable liquids in

[73] *https://www.aar.org/policy/positive-train-control.*

[74] Public Law 110–432—Rail Safety Improvement Act of 2008, *https://www.fra.dot.gov/eLib/Details/L03588.*

[75] *http://www.gpo.gov/fdsys/pkg/FR-2010-01-15/pdf/E9-31362.pdf.*

tank cars that comply with the new standards.

Effectiveness of ECP Brake Systems

ECP braking is a proven technology that is a reliable and effective way to slow and stop a train, and to prevent accidents from occurring, while also allowing for more efficient operations. ECP brakes have been used in North American railroad operations since at least 1998. PHMSA and FRA recognize that there have been hurdles in the deployment of ECP brakes. However, the technology has continued to improve since 1998 and carriers are in a better position now to ensure that ECP brakes are successfully implemented. The railroad industry has effectively addressed crosstalk and interoperability issues and has updated AAR Standard S–4200 accordingly. We expect that concerns related to maintenance and repair issues that arise during normal operations will be resolved through adequate training of operating crews and maintenance personnel, which has been factored into the cost of this rule.[76] These issues are discussed in detail in the ''Reliability and Technological Readiness'' section of the RIA, which has been added to the docket.

There are currently six unit coal trains being operated with ECP brake systems in the U.S. These began as waiver test trains; however, all but one are now in regular revenue service. NS began operating unit coal trains using ECP braking systems in 2007,[77] and it is currently operating five ECP-equipped unit coal trains. These trains presently make trips from coal mines in Southwestern Pennsylvania to the Keystone Generating Station near Shelocta, PA (two 100-car or more trains; approximately 350 miles round-trip) and to a generating station near Blairsville, PA. NS also operates unit coal trains originating in the mines of Southwest Virginia that transport coal to a power plant in Clover, VA (approximately 700 miles round-trip).[78] Additionally, in 2014, NS began operating a unit coal train with BNSF providing operating crews while the train operates over BNSF's rail line that travels between the Powder River Basin and Macon, GA. BNSF, independently, has operated a 135-car ECP-equipped unit coal train since 2008 that travels approximately 3,060 miles round-trip from the Powder River Basin to Palos, AL.[79] PHMSA and FRA are unaware of any accidents or incidents (such as a derailment) along these routes to date that could be attributed to operational issues with ECP brakes.

Some commenters have noted that there has not been widespread adoption of ECP brakes in the U.S. There are a number of factors that contribute to this. First, the positive train control (PTC) requirement diverted significant capital (financial and human) toward signal systems at a time when those resources might have otherwise been directed at ECP brakes. Second, it has been difficult to implement ECP brakes outside of a limited type of service in part because they are not compatible with the conventional air brakes (this is particularly true stand-alone systems, which are less expensive). This means that ECP brakes would only be used on unit trains that are in captured service and both the car owner and the railroad agree on its use. Further, the limited usage contributes to unfamiliarity with the technology and likely contributes to many of the operational and maintenance difficulties expressed by railroads in their comments. Third, there are market inefficiencies that have limited implementation of ECP brakes. ECP brakes are most likely to be implemented on a voluntary basis where owner of ECP-equipped cars has control over a seamless operation of unit trains from the originating location to the delivery location, such as what is found in Australia or South Africa. In the U.S. most cars owners have little incentive install ECP brakes because they tend to bear most of the upfront cost of installing the braking system, while most of the benefits (such as decreased fuel consumption) are realized by a separate entity, the operating railroad. Notwithstanding, car owners might still have an incentive to install ECP brakes if they were to realize greater utilization due to less inspections. However, FRA understands that railroads effectively eliminated the incentive to install ECP brakes by treating such cars as being in premium service, resulting in higher cost per use.

AAR contends that most of the benefits from ECP brakes, such as more efficient fuel consumption and reduced wheel wear, are currently realized through the widespread use of dynamic braking. PHMSA and FRA did not address this issue in the NPRM and it was not raised until after the close of the comment period.[80] While dynamic braking does provide an alternative to pneumatic brakes for slowing a train in non-emergency situation and allows a train to operate more efficiently, trains that use dynamic braking and not ECP brakes do not get business benefits from ECP brakes. AAR analyzed data from a small number of trips of ECP-equipped trains and found that 89 percent of the time that the train was braking, it was not using ECP brakes in whole or in part. AAR, therefore, estimated that 85 percent of the fuel and wheel savings benefits are currently realized through use of dynamic brakes. PHMSA and FRA accept that the fuel and wheel savings should be reduced to account for the use of dynamic braking, but the reduction should be smaller than 85 percent. The ability to use ECP brakes in conjunction with dynamic brakes further improves fuel efficiency by as much as five percent above dynamic braking alone, depending on the routes and railroad practices. For instance, Canadian Pacific achieved a fuel savings of 5.4 percent when ECP brakes were used along with dynamic brakes during testing in Golden, British Columbia, on a route that has particularly advantageous terrain for maximizing the fuel benefits associated with ECP braking.[81] Because not all terrain will be as advantageous as this test region, PHMSA and FRA have reduced the estimated fuel efficiency benefits by 50 percent, corresponding to a fuel improvement rate of 2.5 percent on top of dynamic braking. However, this estimate is conservative and likely understates the fuel efficiency benefits.

PHMSA and FRA also accept that benefits related to wheel savings should be reduced to account for the use of dynamic braking, but that they should be reduced by less than 85 percent suggested by AAR. Railroads will continue to experience brake induced wheel wear where pneumatic brakes are used, but if the railroads rely on dynamic braking they will face a cost not considered in other parts of the analysis, increased rail wear, with an attendant increased risk of broken rail accidents and increased track maintenance costs. PHMSA and FRA estimate that the use of dynamic braking

[76] PHMSA and FRA estimates that railroads will need to train approximately 51,500 employees.

[77] *ECP Brake Implementation on Norfolk Southern,* presentation to RSAC, October 25, 2007, *https://rsac.fra.dot.gov/meetings/20071025.php.*

[78] *Electronically Controlled Pneumatic Brake Rulemaking,* presentation to RSAC, February 20, 2008, *https://rsac.fra.dot.gov/meetings/20080220.php.*

[79] *BNSF Operates Southern Company Coal Train Equipped with New-Generation Braking System,* 25 January, 2008, *https://www.bnsf.com/media/news/articles/2008/01/2008-01-25a.html.*

[80] AAR gave a presentation on dynamic braking during meetings with the Office of Information and Regulatory Affairs of the Office of Management and Budget held under Executive Order 12,866.

[81] Wachs, K., Aronian, A., Bell, S. Electronically-Controlled Pneumatic (ECP) Brake Experience at Canadian Pacific. *Proceedings from the 2011 International Heavy Haul Conference,* Calgary AB, 2011, available at *http://www.ihha.net/IHA/uploads/assets/fin00258.pdf.*

in conjunction with ECP brakes would reduce the dynamic brake induced rail wear by at least 25 percent based on Canadian Pacific's experience.[82] Further, in spite of initial increases in thermal mechanical shelling due to heavy ''experimenting'' by train crews during the familiarization phase, Canadian Pacific found a four percent improvement in average wheel life.[83] Once operations ''settle in,'' improvements in wheel life may reach ten percent, thus reducing the estimated wheel wear benefit by 75 percent instead of the 85 percent estimated by AAR.

Although PHMSA and FRA agree with those commenters who support ECP braking on unit trains, we disagree with the suggestion from the BMWED and BRS that FRA should restore the 1,000–1,500 mile interval requirement for brake/mechanical inspections. The 3,500 mile interval has a proven record of safety in the seven years of operations on the NS and BNSF railroads. The use of real-time equipment health monitoring capabilities on ECP-equipped trains is an effective safety tool that justifies the extended inspection intervals. Allowing for longer distances between inspection stoppages provides a benefit to railroads without decreasing safety by keeping safe equipment in-service for longer periods of time (each brake test and mechanical inspection can take from two to eight hours to complete and may delay a train even longer depending on available personnel and scheduling). As of October 2014, NS initiated train operations under a 5,000 mile inspection waiver to test the effectiveness of a longer inspection interval on the unit coal train that it runs with BNSF in a loop between the Powder River Basin and Macon, GA.

ECP brake systems based on the AAR S–4200 standard also have been exported successfully for use in Canada, Australia, and South Africa. As an example, the Quebec Cartier Mining Railway (QCM) in Quebec, Canada began using ECP-equipped trains in 1998.[84] The use of ECP brake systems has allowed QCM to experience a 5.7 percent reduction in fuel usage and a 15 percent increase in throughput capacity.[85] As noted above, a report on an ECP-equipped Canadian Pacific train found that the railroad achieved a fuel savings of 5.4 percent from ECP brakes during testing in Golden, British Columbia. The Australian experience also is instructive because, in contrast to the experience in the U.S., a number of railroads in that country have voluntarily invested heavily in ECP brakes.[86] Australian railroads have been using ECP brakes on a portion of its fleet for over a decade,[87] and they currently operate more than 28,000 cars in ECP brake mode. The types of trains that Australian railroads have equipped with ECP brakes share many similarities to HHFUTs in the U.S. Both fleets operate in heavy haul service, stay in extend blocks, and transport commodities that are a substantial source of revenue for the railroad. These Australia railroads have adopted ECP brakes based on expected business benefits (*e.g.* heavier, longer trains), but have found that ECP brakes allow for shorter stopping distances and real time monitoring, which makes them safer than conventional brakes. These issues are discussed in detail in the ''Australian Experience'' section of the RIA, which is part of the docket.

By setting the HHFUT threshold at 70 tank cars of flammable liquids, we expect to maximize the benefits of ECP brakes on the higher risk trains whose tank cars are primarily in dedicated service, while reducing the implementation challenges that would be caused by requiring ECP brakes for any train meeting the definition of an HHFT. By focusing the ECP brake system requirements on trains over the 70-car threshold that travel in excess of 30 mph, we ensure that trains with the greatest associated risk (based on volume of product) will be equipped with the advanced brake signal propagation system that has the highest known effectiveness in reducing the kinetic energy of a train during a derailment. This will reduce the number of cars derailed and punctured. We base our decision on estimates related to an average 100-car unit train transporting Class 3 flammable liquids. FRA and PHMSA's modeling shows the risk posed by a 100-car ECP-equipped unit train made up of DOT–117 tank cars, traveling at 50 mph is approximately the same as a 64-car train of the same cars traveling at the same speed operating with a two-way EOT device. We have established a baseline cut-off at 70 cars in an effort to maximize the return on investment for ECP brakes, by capturing only those trains transporting Class 3 flammable liquids in dedicated service.

In the NPRM, PHMSA and FRA relied on data produced by Sharma & Associates that showed a 36 percent effectiveness rate of ECP brakes over conventional air brakes, as expressed in the probable number of cars punctured. In March 2015, Sharma & Associates performed additional modeling that takes into account the comments received after publication of the NPRM and additional accident information provided by FRA. *See* ''Letter Report: Objective Evaluation of Risk Reduction from Tank Car Design & Operations Improvement—Extended Study,'' Sharma & Associates, March 2015. This updated, purpose-built model from Sharma & Associates supports the view that ECP brakes provide a substantial safety benefit in emergency braking situations compared to conventional air brakes, two-way EOT devices, and DP systems. While a comprehensive discussion of effectiveness rates is provided in the March 2015 Letter Report (which has been added to the docket) and the RIA, some highlights are provided below.

Puncture hazards result from a variety of factors, including operating conditions, speed of the train, and the type of tank car involved, which can make it difficult to objectively quantify the overall safety improvement that ECP brakes provide. The updated model provided by Sharma & Associates encapsulates a variety of factors in an effort to assess the real-world impact of the various braking alternatives considered in the NPRM. The Sharma model is validated by the general agreement between the actual number of tank cars punctured in 22 hazardous material derailments provided by FRA and those predicted by the model.

The March 2015 Letter Report from Sharma & Associates used the most probable number of tank cars punctured to evaluate the benefits of the tank car enhancements, brake systems, and speed. The derailment scenarios were simulated for a 100-car train at different speeds with the first car subjected to a brief lateral force to initiate the derailment. At the point of derailment, Sharma & Associates applied a retarding force to all of the cars in the train that was equivalent to an emergency brake application. For a train with

[82] Wachs, K., p. 4

[83] Wachs, K., p 6

[84] ''Stop that train!'' March 1, 2009, *http://spectrum.ieee.org/transportation/mass-transit/stop-that-train.*

[85] ''Quebec Cartier pioneers safer, more efficient railroad brakes,'' Canadian Mining Journal, December 12, 2006, accessed 12–22–2004 at *http://www.canadianminingjournal.com/news/quebec-cartier-pioneers-safer-more-efficient-railroad-brakes/1000208809/?&er=NAhttp://www.fra.dot.gov/us/content/1713*).

[86] South Africa is another strong adopter of ECP brakes, with about 7,000 railcars equipped with ECP brake technology. It is similar to Australia in that ECP brakes are being used in heavy haul coal service where the trains operate in a continuous loop and the railroads own their own railcars for this service.

[87] ''The ECP Brake—Now it's Arrived, What's the Consensus?,'' Sismey, B. and Day, L., Presented to the Conference on Railway Excellence, 2014, Adelaide, Australia.

conventional air brakes, Sharma & Associates modeled a brake initiation propagated from the front (point of derailment or ''POD'') to the rear of the train. For a train with a two-way EOT device or a DP locomotive at the rear of the train, the emergency brake signal propagation was initiated at both ends of the train. For a train with ECP brakes, the model had all cars simultaneously receiving the braking signal with a brake ratio of 12 percent. As reflected in the table below, for DOT–117 and DOT–117R type tank cars, the ECP braking system was consistently the top performer in terms of the most likely number of cars punctured, while two-way EOT devices and DP systems with a locomotive at the rear consistently out-performed conventional air brake systems.

TABLE 26—MOST LIKELY NUMBER OF PUNCTURES: 100-CAR TRAIN, WITH POD AT HEAD END

Tank type	Speed, mph	Conventional brakes	2-way EOT (DP: lead + rear)	ECP Brakes
7/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	4.7	3.9	3.3
	40	8.0	7.1	5.3
	50	12.2	9.8	9.1
9/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	3.8	3.2	2.6
	40	6.6	5.9	4.3
	50	10.2	8.2	7.6

Based on the analysis in the 2015 Letter Report from Sharma & Associates, PHMSA and FRA believe that ECP brakes, in isolation, can be expected to reduce the number of cars punctured by up to 30 percent when compared to conventional air brake systems (with a minimal variation based on train speed), while a two-way EOT device or DP locomotive at the rear of the train is projected to reduce the number of cars punctured by up to 16 percent. These numbers are reflected in the table below, for DOT–117 and DOT–117R type tank cars.

TABLE 27—RISK IMPROVEMENT DUE TO BRAKING WITH POD AT HEAD END

100 Cars behind POD		Most likely number of punctures			% Improvement due to brakes only		
Tank type	Speed, mph	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes
7/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	4.7	3.9	3.3	0	17	30
	40	8.0	7.1	5.3	0	11	34
	50	12.2	9.8	9.1	0	20	25
9/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	3.8	3.2	2.6	0	16	32
	40	6.6	5.9	4.3	0	11	35
	50	10.2	8.2	7.6	0	20	25
Average						16	30

Sharma modeling indicates the ECP brake system always provides an advantage over the conventional air brake system in terms of likely number of tank cars punctured. This is true regardless of the location of the derailment within the train because the brakes are being applied to each car in the train at the same time. However, a number of commenters suggested that the scenarios modeled by Sharma & Associates may overstate the effectiveness of ECP brake systems because its model focused on measuring derailments at the front of a train. As a result, FRA conducted further analysis based on the simulations of derailments at different points in the train. FRA's simulations considered derailments at locations with 100, 80, 50, and 20 cars trailing the point of derailment. A polynomial fit of the resulting derailment and puncture results data from the simulations enabled FRA to evaluate the results of a derailment at any location in the train through interpolation and extrapolation. The results of the evaluation indicated that POD does impact the estimated number of cars punctured for any of the simulated brake systems, including a reduction in the estimated number of cars punctured for trains operated in ECP brake mode. This is expected given that if a derailment occurs at the 50th car in a train rather than the first car in the train, there are fewer cars to derail after the POD. However, in every simulation, the likely number of cars punctured on a train that uses ECP braking to effectuate an emergency stop was lower than the likely number of cars punctured on a train that uses a two-way EOT device or DP system with the locomotive at the rear to effectuate the same emergency stop. See Tables 29 and 30.

TABLE 28—MOST LIKELY NUMBER OF PUNCTURES: 100-CAR TRAIN, WITH POD DISTRIBUTED THROUGHOUT TRAIN

Tank type	Speed, mph	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes
7/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	3.4	2.8	2.6

TABLE 28—MOST LIKELY NUMBER OF PUNCTURES: 100-CAR TRAIN, WITH POD DISTRIBUTED THROUGHOUT TRAIN—Continued

Tank type	Speed, mph	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes
	40	6.8	6.2	4.65
	50	9.3	7.92	7.2
9/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	2.8	2.4	2.2
	40	5.6	5.1	3.8
	50	7.8	6.6	6.0

TABLE 29—RISK IMPROVEMENT DUE TO BRAKING, WITH POD DISTRIBUTED THROUGHOUT THE TRAIN

100 Cars behind POD		Most likely number of punctures			% Improvement due to brakes only		
Tank type	Speed, mph	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes	Conventional brakes	2-way EOT (DP: lead + rear)	ECP brakes
7/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	3.4	2.8	2.6	0	18	24
	.....	6.8	6.2	4.65	0	9	31
	50	9.3	7.92	7.2	0	15	23
9/16-inch TC128, 11 gauge jacket, 1/2-inch full-height head shield	30	2.8	2.4	2.2	0	14	21
	40	5.6	5.1	3.8	0	9	32
	50	7.8	6.6	6.0	0	15	23
Average	.....	.....	.....	.....	.....	13	26

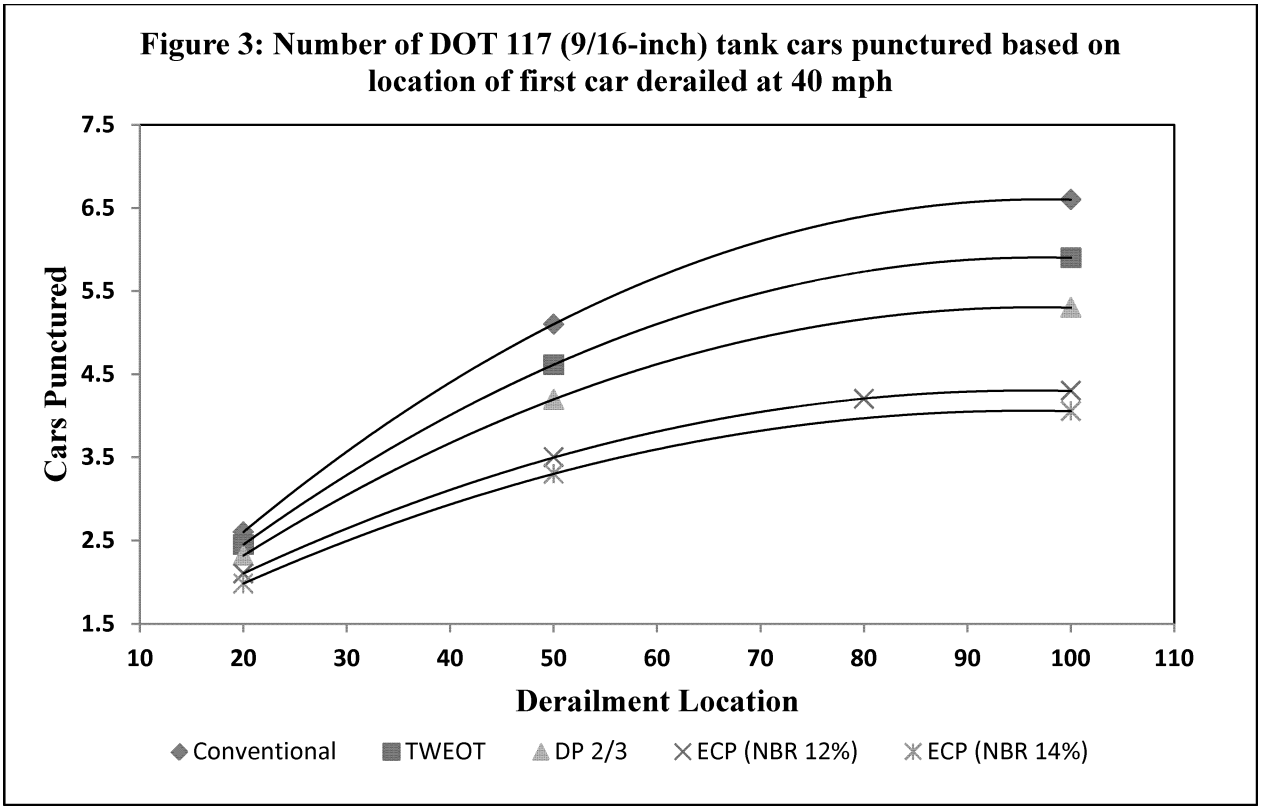
Using this information, PHMSA and FRA conducted further analysis of the data. We estimated effectiveness at 30, 40, and 50 mph, and took a weighted average of those results based on severity, using information about the quantity of product released that is in the historical record. PHMSA and FRA assigned historical derailments under 35 mph to the 30 mph effectiveness rate, assigning derailments between 35 and 45 mph to the 40 mph effectiveness rate, and assigning derailments over 45 mph to the 50 mph effectiveness rate. This analysis is reflected in Table 30, below.

TABLE 30—EFFECTIVENESS RATE OF ECP BRAKES WEIGHTED BY VOLUME OF PRODUCT SPILLED IN A DERAILMENT

	Number of incidents	Total spill volume	Share of total volume (%)	ECP effectiveness rate at 30, 40, 50 mph (%)	Cumulative effectiveness rate (%)
Below 34 mph	33	798,433	22.8	20.10	4.6
35–44 mph	8	1488350	49.2	25.80	12.7
45 mph and above	5	980180	28	8.60	2.4
Total	46	3499656	100	.....	19.7

Because the effectiveness rates are lower at 30 mph and at 50 mph than they are at 40 mph, this process would result in an effectiveness rate of about 20 percent, which signifies the benefit of ECP brakes compared to two-way EOT devices or DP systems, when weighted by severity using the amount of product spilled in a derailment.

As there were comments related to placing a DP locomotive in the middle of the train, approximately two-thirds from the front (*i.e.* DP 2/3), PHMSA and FRA also looked into this configuration. It found that ECP brakes also outperformed the DP 2/3 option. *See* Figure 3. This analysis is addressed more fully in the RIA.



The results of the simulations in the March 2015 Letter Report from Sharma & Associates and the FRA analysis of the data show that advanced brake signal propagation systems reduce the rates of puncture in derailing tank cars relative to a conventional air brake system, with ECP brake systems demonstrating the best overall performance. The risk reduction benefits for ECP brake systems are most pronounced for long trains. As trains become shorter, the differences in puncture rates become diminished between ECP brakes and two-EOT devices or DP systems with a locomotive at the rear because of the limited time needed to initiate emergency braking. Thus, additional requirements for advanced brake signal propagation systems are feasible for addressing risks related to HHFTs, and ECP brake systems are particularly appropriate for HHFUTs. A full explanation of the benefits calculation can be found in the RIA.

Availability and Costs of ECP Brake Systems

In the RIA for this final rule, PHMSA and FRA revised the assumptions made for the August 1, 2014, NPRM, including the following: Increased the estimate on the per car cost of installing ECP brakes, reduced the number of tank cars required to be equipped with ECP brakes, increased the number of locomotives required to be equipped with ECP brakes, and reduced the per locomotive cost for ECP-equipped locomotives.

Many of the commenters noted that our estimate for retrofitting a tank car with ECP brakes was low. In the NPRM, we estimated that the cost to implement the ECP brake system requirements would range between $3,000 and $5,000 per car. PHMSA and FRA now believe that the appropriate cost estimate is between $7,000 and $8,000. For our analysis we used $7,633 per car, which is based on the estimated number of new and retrofit cars that will need to have ECP brakes applied. Our updated cost estimate is for an overlay system and includes the cost of maintenance for the system.

For the NPRM, PHMSA and FRA determined that all of the tank cars in the fleet would need to be equipped with ECP brakes. To reduce the costs and for the purposes of this final rule, we have assumed that only tank cars that are part of unit trains carrying Class 3 flammable liquids would need ECP brakes, as they are the only train consists that would be required to operate with an ECP braking system. Thus, over a calculated 20-year period, we reduced the number of tank cars needing ECP brakes from more than 130,000 to 60,231.

Many of the commenters also noted that we were not equipping enough locomotives with ECP brakes in our cost estimates. In the NPRM, we estimated that 900 locomotives would need to be equipped with ECP brakes. For the purposes of the final rule, this number was increased to 2,532. This number was derived based on the determination that there would be approximately 633 HHFUTs on the U.S. rail network at peak crude oil production. PHMSA and FRA estimated that there would be an average of three locomotives per unit train and included a 25 percent spare ratio to account for locomotives that are out-of-service or potentially diverted to other uses. AAR suggested that the entire Class I locomotive fleet would need to be ECP-equipped, but with our revised estimates, which consider the number of locomotives needed operate 633 HHFUTs, we feel that AAR significantly overstates the number of locomotives that need to be ECP-equipped.

In the NPRM, we also assumed that all of the locomotives would be retrofitted with ECP brakes at a cost of $80,000 per locomotive. The rail industry currently purchases around 1,000 new locomotives every year due to retirements of older locomotives and growth in rail transport demand. PHMSA and FRA assume that new locomotives will be ordered with ECP

brakes, which reduces the costs to an incremental amount of to $40,000 per locomotive, after the base cost of electronic brake equipment (such as CCB–II or Fastbrake).[88] We also include additional costs such as battery replacement, cable replacement, and additional jumper cables to allow a locomotive not equipped with ECP brakes to assist in operating an ECP-equipped train.

Regarding the availability of ECP brakes, both known manufacturers of ECP systems (New York Air Brake and Wabtec) provided comments to the NPRM. Neither expressed the concern that they would be unable to manufacture the amount of components necessary to meet any regulatory requirements as other commenters claim. Regarding comments raising concerns about the interoperability of ECP braking systems from the two manufacturers, PHMSA and FRA believe that newly built systems will be built to the updated industry standard, AAR S–4200, which requires full compatibility (interoperability) of ECP braking systems in accordance with 49 CFR 232.603.

Implementation Schedule

Railroads are required to operate an HHFT with either a two-way EOT device or a DP system immediately once the final rule becomes effective. There are two deadlines for the implementation of the requirements pertaining to HHFUTs. The first requires that trains meeting the definition of an HHFUT comprised of at least one tank car loaded with a Packing Group I flammable liquid be operated with an ECP braking system by January 1, 2021, when traveling in excess of 30 mph. The second requires that all other trains meeting the definition of an HHFUT (*i.e.* those trains not transporting one or more tank car loaded with a Packing Group I flammable liquid) be operated with an ECP braking system by May 1, 2023, when traveling in excess of 30 mph. We believe a dual phase-in period is a practical timeline for effective implementation of the ECP braking system requirement, and it ensures that ECP braking systems will be installed to cover the expected peak year of crude oil production. This schedule takes into account feedback received during the comment period and estimates related to the retrofit schedule for DOT–117R tank cars.

ECP brake systems have not been installed on a widespread basis throughout the U.S. fleet of locomotives and rail cars. As discussed above, NS and BNSF have used ECP brakes on six unit coal trains, but U.S. railroads have not used ECP brake systems in conjunction with unit trains transporting flammable liquids, such as crude oil and ethanol. FRA and PHMSA estimate that there will be 633 HHFUTs on the U.S. rail network at peak crude oil production, and the railroad industry will need 2,532 locomotives and 60,231 tank cars to be ECP-equipped in order to comply with the ECP braking requirements. We revised our estimates from the NPRM based on comments received that manufacturers will produce approximately new 1,000 locomotives per year and more than 11,000 tank cars per year could be fitted with ECP brakes (with approximately one third of those being new car construction and two thirds of those being retrofits on existing tank cars). By establishing the dual implementation schedule for ECP brake systems, we are providing the railroads and manufacturers of locomotives and tank cars with the ability to establish a realistic schedule to equip the locomotives and tank cars with ECP brake systems in a timely and efficient manner. However, there is a possibility that as railroads amass ECP-equipped trains, some trains will be run in ECP brake mode in advance of the deadline. The expectation is that railroads will have incentives to put ECP-equipped trains in service once acquired to take advantage of the business benefits related to operating in ECP brake mode (*e.g.,* reduced fuel consumption, longer inspection intervals, etc.).

Training for ECP Brake Systems

Although there is not a specific training requirement in this final rule, FRA and PHMSA recognize that the implementation of ECP brake systems will require training for operating employees and inspection personnel that perform service on trains equipped with ECP brakes. The substantive training requirements for each railroad employee or contractor are addressed in 49 CFR 232.605. We expect that railroads will comply with the ECP braking system training requirements in § 232.605 to ensure that applicable railroad personnel have the knowledge and skill necessary to perform service related to ECP braking systems.

In the NPRM, we assumed that 9,000 employees would need to be trained on ECP brake systems. After a review of comments, we increased the estimate of additional people that need to be trained on ECP brake systems to about 51,500 employees based on a percentage of ton mileage. This includes carmen who had not been considered in the training calculations in the NPRM. Also, in the NPRM, we assumed a two-week training period; however, based on FRA participation in ECP brake training experience, we determined that the number of hours needed to trains these employees would be substantially less. Carmen that are not involved in performing single car tests can be trained in a one-day formal training session and a week of intermittent on the job training. Single car test users will need an additional half-day of formal training and an additional week of on the job training.

Implementing ECP Brake Systems With PTC Technology

ECP brake technology provides separate safety benefits not captured in FRA's PTC regulations. PTC-preventable overspeed derailments may occur because of an inadequate or improperly functioning brake system, but accidents involving brake failure were never counted among PTC-preventable accidents. Only one accident in the group of accidents reviewed by PHMSA and FRA for this rulemaking, at Rockford, IL, had the potential to have been prevented by PTC technology, and then only if ancillary features were adopted. In that accident, a flash flood caused the track's base to wash away. Railroad procedures require trains be warned of flash flood threats, which usually leads to a speed restriction. It is not a requirement of the PTC regulations, but if a railroad had its PTC system in place and the speed restriction warning was automated, it would have restricted the train's speed, making it likely the crew would have been able to stop in half the range of vision.

Although ECP braking systems typically are directed at different types of incidents than those that are PTC-preventable, PHMSA and FRA do believe that the use of ECP brakes coupled with the implementation of PTC technology could result in significant safety benefits. Trains equipped with electronics throughout the train consist will be able to use that electronic network as a platform for future safety innovations, such as hand brake and hatch sensors.

While commenters such as BNSF raised concerns, PHMSA and FRA do not believe that the implementation of the ECP brake system requirement will necessitate a rewrite of braking algorithms on HHFUTs operating over PTC routes. We do recognize that using ECP brakes systems will allow for real-time equipment health monitoring and

[88] CCB II and Fastbrake are the commercially available base brake equipment offered by New York Air Brake and Wabtec respectively.

higher permitted braking ratios. A railroad may find it beneficial to create a more efficient algorithm than is possible with conventionally braked trains in order to implement some of these ECP brake system benefits into its PTC system. The more efficient algorithm could allow for increased fluidity and more throughputs over railroad routes on ECP-equipped trains. If a railroad decided to edit its braking algorithms to account for the advanced braking capabilities of ECP brake systems on PTC routes, such changes likely would be considered ''safety critical'' modifications requiring FRA approval. *See* 49 CFR 236.1021. However, given that the ECP brake requirements for HHFUTs do not go into effect until January 1, 2021 at the earliest, railroads will have sufficient time to make desired edits to braking algorithms and submit any necessary requests for approval to FRA. Therefore, PHMSA and FRA do not view the editing of braking algorithms as an impediment to accomplishing the requirements of this rulemaking or complying with FRA's PTC regulations.

Conclusion

Based on the above discussion, a new section § 174.310(a)(3) is being created to adopt new braking requirements for HHFTs. Specifically, this provision requires that a HHFT (as defined in § 171.8) must be equipped and operated with a two-way EOT device or DP system. Heightened braking requirements are being adopted to cover trains that transport 70 or more tank cars of flammable liquids while operating over 30 mph. Unit trains that meet this threshold must be equipped with ECP brakes and must be operated in ECP brake mode based on a dual implementation schedule. The first requires that trains meeting the definition of an HHFUT comprised of at least one tank car loaded with a Packing Group I material be operated with an electronically controlled pneumatic (ECP) braking system after January 1, 2021. The second requires that all other trains meeting the definition of an HHFUT be operated with an ECP braking system after May 1, 2023.

PHMSA and FRA have made regulatory decisions within this final rule based upon the best currently available data and information. PHMSA and FRA are confident that ECP implementation can be accomplished by the compliance date adopted in this final rule. However, PHMSA and FRA will continue to gather and analyze additional data. Executive Order 13610 urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. Consistent with its obligations under E.O. 13610, Identifying and Reducing Regulatory Burdens, PHMSA and FRA will retrospectively review all relevant provisions in this final rule, including industry progress toward ECP implementation.

E. Classification

In its recommendation, R–14–6, the NTSB recognized the importance of requiring ''shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation.'' PHMSA supports NTSB's recommendation. As discussed previously, PHMSA and FRA audits of crude oil facilities indicated the classification of crude oil transported by rail was often based solely on a generic Safety Data Sheet (SDS). PHMSA believes that establishing documentation and criteria for classification sampling and testing frequency will increase consistency and accuracy of the data and improve confidence in package selection, hazard communication, and ultimately safety in the transportation of hazardous materials. Considering the challenges posed by materials with variable composition and potentially variable properties, such as crude oil, providing criteria for sampling and testing a critical first-step in safe transportation.

Given the responsibility on the offeror to properly classify materials,[89] PHMSA proposed a new regulatory requirement in this area. The NPRM proposed to add a new § 173.41 that would explicitly require a sampling and testing program for mined gases and liquids, including crude oil. Under the proposed new § 173.41(a), this program would be required to address the following key elements that are designed to ensure proper classification and characterization of crude oil:

- Frequency of sampling and testing to account for appreciable variability of the material, including the time, temperature, means of extraction (including any use of a chemical),[90] and location of extraction;
- Sampling at various points along the supply chain to understand the variability of the material during transportation;
- Sampling methods that ensure a representative sample of the entire mixture, as packaged, is collected;
- Testing methods to enable complete analysis, classification, and characterization of the material under the HMR;
- Statistical justification for sample frequencies;
- Duplicate samples for quality assurance purposes; and
- Criteria for modifying the sampling and testing program.

This proposal would also add a § 173.41(b), linking the shipper's certification requirements, as prescribed in § 172.204, to this sampling and testing program for mined gases and liquids.

In addition, the proposed § 173.41(c) would require that the sampling and testing program be documented in writing and retained while the program remains in effect. The proposed section requires the sampling and testing program must be reviewed and revised and/or updated as necessary to reflect changing circumstances. The most recent version of the sampling and testing program, must be made available to the employees who are responsible for implementing it. When the sampling and testing program is updated or revised, all employees responsible for implementing it must be notified and all copies of the sampling and testing program must be maintained as of the date of the most recent version.

PHMSA further proposed to add a new § 173.41(d) that would mandate that each person required to develop and implement a sampling and testing program maintain a copy of the sampling and testing program documentation (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the documentation available upon request, at a reasonable time and location, to an authorized official of DOT.

In response to the proposed requirements for a sampling and testing program, we received a number of comments representing approximately 65,200 signatories. The majority of these signatories were part of write-in campaigns for environmental groups. Below is a table detailing the types and amounts of commenters on the classification plan proposal.

[89] Under 49 CFR 173.22.

[90] This accounting for the method of extraction would not require disclosure of confidential information.

TABLE 31—COMMENTER COMPOSITION: CLASSIFICATION COMMENTS

Commenter type	Signatories
Non-Government Organization	62,045
Individuals	3,098
Industry stakeholders	23
Government organizations or representatives	29
Totals	65,195

Most industry stakeholders were either content with the measures currently in place to classify mined gases or liquids or supported use of API RP 3000.[91] However, other commenters believed both the current and proposed regulations were insufficient. Environmental groups, the NTSB, local, tribal or state government organizations, and individuals felt that the DOT should clarify and expand the proposed requirements. Specifically, commenters addressed: The need for enhanced classification; use of the term ''characterization;'' inclusion of specific materials in the testing and sampling program; variability of mined liquids and gases; applicability and ''sampling along the supply chain''; sampling methodology and documentation; incorporation and use of API RP 3000 standards; specific testing methodology; and applicability of testing requirements.

Industry stakeholders questioned the need for regulatory amendments expanding the existing classification requirements. Several industry stakeholders stated that there is no justification for creating additional classification requirements because misclassification has had no role in the derailments or impact on safety. Specifically Exxon Mobil stated that Bakken crude oil is not different from other light crudes and is correctly classified. It referenced API modeling, which has indicated that Bakken crude will behave similarly to other crudes in a fire. AFPM further stated that the ''only misclassification'' PHMSA found during investigations was incorrect packing group on shipping papers for cargo tank motor vehicles, but crude oil was otherwise communicated and packaged appropriately. PHMSA received support for implementing an enhanced classification and characterization from a wide range of commenters including local governments, safety organizations, and individual citizens among others. Many comments in support of the rulemaking highlighted the importance of proper classification for emergency responders.

Although the classification of crude oil has not caused derailments, we disagree that expanding existing classification requirements will not impact transportation safety. In this rulemaking, PHMSA is proposing new or amended requirements as part of a comprehensive approach to improving the safe transportation of flammable liquids by rail. This includes ensuring that proper packaging, operational controls, and hazard communication requirements are met, all of which are important to mitigate the negative effects of derailment, and are determined by classification. As discussed previously, PHMSA and FRA audits of crude oil facilities indicated the classification of crude oil transported by rail was often based solely on a Safety Data Sheet (SDS). While the classification of manufactured products is generally well understood and consistent, unrefined petroleum-based products potentially have significant variability in their properties as a function of time, location, method of extraction, temperature at time of extraction, and the type and extent of conditioning or processing of the material. Unrefined petroleum-based products refers to hazardous hydrocarbons that are extracted from the earth and have not yet been refined. These products may undergo initial processing such as for the removal of water and light gases, and which may undergo further processing, but have not gone through a quality assurance/quality control process such that the properties of the product being offered for transportation are known and consistent. As such, we believe it is necessary to require development and adherence to a consistent and comprehensive sampling and testing program, and to provide oversight for such a program.

Several commenters indicated that the term ''characterization'' was not defined, unnecessary, or requires clarification. This term was used in the March 6, 2014 Emergency Order regarding classification to highlight the comprehensive nature of the existing requirements. DGAC, API and other commenters stated that the term ''characterization'' is not used elsewhere in the regulations and is confusing. Industry stakeholders also expressed concern that the types of testing required for characterization was unclear. Local and other government representatives, environmental groups, individuals, and others supported use of the term ''characterization.''

As used in the NPRM and March 6, 2014 Emergency Order, the term characterization was intended to convey the comprehensive nature of the offeror's responsibility to fully classify and describe their material in accordance with Parts 172 and 173. This includes identifying additional properties of the hazardous material which are not specified by the proper shipping name, but are necessary to meet packaging requirements in Part 173. We agree that the current classification requirements as required by § 173.22 encompasses the requirement to fully describe the material, including considering all appropriate hazard classes, selecting the correct packing group, selecting the most appropriate proper shipping name, and obtaining complete information to follow all packaging instructions. However, we disagree that hazard class testing is sufficient to provide the information necessary to comply with § 173.22. Therefore, we are clarifying the sampling and testing program to include a requirement to ''identify properties relevant to the selection of packaging through testing or other appropriate means,'' in place of using the term ''characterization.'' This provides greater specificity and clarity to the purpose and type of testing required.

Several commenters addressed the inclusion of specific materials in the sampling and testing program requirements, with some commenters preferring broader applicability and some narrower. Comments ranged from supporting expanding the applicability of classification sampling and documentation requirement to all hazardous materials, clarifying the definition of ''mined liquids and gases'' to specify inclusion of hazardous byproducts and wastes or materials derived from hydraulic fracking or other methods of extraction, and limiting the applicability of the definition to only include petroleum crude oil. Commenters on both sides were concerned that the phrase ''mined liquids and gases'' did not clearly specify which materials were covered by the rulemaking. Trade Associations such as API, AFPM and DGAC stated that the term ''mined liquids and gases'' is ''not used by the petroleum industry.'' Other commenters questioned which specific materials met the definition of ''mined liquids and gases.''

We disagree with NTSB's request to expand the sampling and testing program to all hazardous materials.

[91] This recommend practice went through a public comment period in order to be designated as an American National Standard. The standard addresses the proper classification of crude oil for rail transportation and quantity measurement for overfill prevention when loading crude oil into rail tank cars.

PHMSA does not believe there is sufficient justification to expand the rule to all hazardous materials or manufactured liquids such as ethanol. The intent of the sampling and testing plan is to address materials that have inherent variability of properties. Further, we did not propose to expand the applicability beyond mined liquids and gases.

We disagree with commenters who suggested the sampling and testing program should be expanded to address all other byproducts or wastes created by the extraction process of all mined liquids and gases, including byproducts or wastes created by the hydraulic fracturing of natural gas. The HMR already requires classification of all hazardous materials before transportation and compliance with all packaging requirements. Commenters did not provide sufficient data to justify expanding costs and recordkeeping for a sampling and testing program to these additional materials.

We also disagree with commenters who suggested the testing and sampling requirements should be limited to only petroleum crude oil. As stated previously, the extraction process and initial conditioning of petroleum crude oil may include the production of other unrefined petroleum-based products, which may have variable properties that must be identified.

We agree with commenters that state the phrase 'mined liquids and gases' needs further clarification. As proposed, the term ''mined liquids and gases'' referred to liquids and gases extracted from the earth through methods such as wells, drilling, or hydraulic fracturing. While the term ''mined liquids and gases'' was proposed in the rulemaking, the RIA only included offerors related to the production and extraction of petroleum liquids, liquefied petroleum gases (including propane), and natural gases when measuring affected entities. No data was provided by commenters to justify benefits from expanding the definition beyond petroleum liquids, liquefied petroleum gases, and natural gases extracted from the earth. This list includes both unrefined and refined petroleum-based products. However, unrefined products have the greatest potential for variability of chemical and physical properties. The properties of refined petroleum-based products shipped from extraction sites are consistent. Therefore, we are clarifying the scope of this section to apply to unrefined petroleum based products. Specifying ''unrefined petroleum-based products'' refers to hazardous hydrocarbons that are extracted from the earth and have not yet been refined. This includes petroleum-based liquid and gas wastes and byproducts, such as condensates, which exhibit variability. Furthermore, use of the term ''unrefined'' provides greater clarification to the other requirements of the testing and sampling program. Therefore, specifying unrefined petroleum-based products clarifies the identification of mined liquids and gases with variable properties intended by the NPRM, without creating an undue burden.

Some commenters addressed the question in the NPRM asking for information on the variability within a region. API identified several factors that affect variability, not addressed in the NPRM, such as, ''stability of petroleum crude oil to be loaded, single source vs. multiple sources, type of tank car loading facility, changes in crude oil production characteristics.'' It further stated that the requirement to include factors affecting variability in § 173.41(a)(1) describe the materials in the form they are extracted from the ground, but not the form they are shipped. Similarly, API and other commenters express concern that the requirement in § 173.41(a)(3) to sample material ''as packaged'' suggests that sampling may only be performed after the crude oil has been loaded into a transport vehicle.

We agree with API, that the intent of these requirements is to capture factors that may contribute to variability of the material as offered for transportation. We are clarifying § 173.41(a)(1) to specify that the program must account for ''any appreciable variability of the material'' with a list of recommended factors. This provides offerors the flexibility to identify the factors contributing to variability in their specific operation. We are also amending § 173.41(a)(3) to replace ''as packaged'' with ''as offered'' to clarify that the sampling may occur before the crude oil has been loaded into a transport vehicle.

Commenters expressed interest in clarifying the responsibility for development and execution of the sampling and testing program. For example, one consultant stated, ''the term 'offeror' and sampling program requirements are too broad to effectively determine who is ultimately responsible for compliance.'' Individuals and environmental groups suggested specifying that ''each operator'' or ''custody transfer point'' should be responsible for complying with the sampling and testing program. Industry stakeholders, including AFPM, recommended ''less prescriptive mandates'' for the sampling program and suggested duplicate sampling provided an undue burden. Commenters also suggested providing statistical justification for sample frequencies was an undue burden, or that the provision should be delayed to allow time for compliance. Public and environmental groups supported more detailed mandates to ensure uniformity, thoroughness, and clarity. While some commenters supported certification requirements, others recommended removing the requirement or modifying the language. Commenters on both sides agreed the requirement to sample ''along the supply chain'' is not sufficiently clear, and should be clarified.

The one area where the concerned public, environmental groups, and industry stakeholders agreed was that API RP 3000 should be adopted or permitted as a method of compliance with the proposed requirements. API further described that many requirements in the proposed paragraph § 173.41(a)(1) would align with API RP 3000 requirements, if clarifications were made. API provided detailed recommendations for amending the requirements in § 173.41. In addition to areas mentioned elsewhere in the comment summary, API recommended changing the requirement for ''statistical justification'' to ''quality control justification'' to allow other equivalent methods for quality control, changing the requirement for duplicate sampling to allow other equivalent methods, and removing the requirement to specify criteria for changing the program.

We disagree that the responsibility for compliance with the program is unclear. It is the responsibility of the offeror to certify compliance with the sampling and testing program. The term ''offeror'' is used throughout the regulations to specify applicability for transportation functions and is defined under ''person who offers'' in § 171.8. In response to comments stating that ''sampling along the supply chain'' is unclear, we are clarifying this language. The intent of this provision is to require sampling both before the product is initially offered and when changes that may affect the properties of the material occur (*i.e.,* mixing of the material from multiple sources).

We disagree the other requirements of the program are unnecessary, unclear, or overly burdensome, as each provision is designed to ensure adequate sampling and testing to address the unique characteristics and variability of the properties of these materials. Moreover, these requirements align with and provide greater specificity regarding existing regulations requiring proper classification. However, we also agree

with API that an equivalent level of safety and quality control intended by the requirements for ''duplicate sampling'' and ''statistical justification'' can be reached through other measures. Therefore, we are adopting ''quality control measures for sampling frequencies,'' in place of ''statistical justification.'' We are also adding ''or equivalent measures for quality assurance'' to the requirement for ''duplicate sampling.''

Finally, we are not adopting API RP 3000 as a requirement at this time. As indicated in the NPRM, we did not contemplate or propose adopting API RP 3000 in the NPRM, as it had not yet been finalized. Furthermore, the boiling point test specified in the API RP 3000 does not align with the requirements currently authorized in the HMR. Shippers must continue to use the testing methods for classification of flammable liquids outlined in § 173.120 and flammable gases in § 173.115. However, API RP 3000 is otherwise consistent with the sampling program requirements in paragraph 173.41(a)(1)–(6) and may be used to satisfy these adopted sampling provisions. Furthermore, voluntary use of API RP 3000 provides guidance for compliance with these provisions, but still allows flexibility for meeting requirements through other methods.

Comments regarding the specific testing methodology ranged from specifying more limited sampling and testing program requirements to mandating a more robust, detailed sampling and testing program. Local and state governments, environmental groups, and individuals recommended mandating who performs testing (*e.g.,* requiring third-party oversight of testing program or specifying tests could only be performed by third party without financial interest in company). Commenters also recommended requiring dissemination of test results to third parties such as DOT, local governments, emergency responders, or the public. Industry stakeholders recommended limiting testing to flashpoint and boiling point determination. Other commenters recommended mandating specific, additional tests. Commenters expressed particular interest in either mandating that vapor pressure be tested or clarifying that it is never required for flammable liquids.

Requiring third-party oversight of testing program or specifying tests could only be performed by third party without financial interest in company is not necessary as PHMSA and FRA will already have oversight of the sampling and testing program requirements for unrefined petroleum-based products. As part of the requirements adopted in this rule, each person required to develop a sampling and testing program make the documentation available upon request to an authorized official of the Department of Transportation. This provides sufficient oversight and will ensure that offerors are complying with the requirements. Should an offeror not comply, PHMSA and FRA officials will be able to take enforcement action. In addition, requiring dissemination of test results to third parties is not necessary as the emergency response guidebook already provides information on the hazards of specific materials and through the routing requirements, fusion centers can provide a mechanism for authorized individuals to acquire information about the amount of those materials transported.

PHMSA did not propose requiring third-party involvement with testing or submitting test results to a third party in the NPRM and, as such, is not adopting any such requirements. PHMSA did not propose regulatory changes to classification test procedures, and as such, is not adopting any such requirements. Furthermore, in the NPRM, PHMSA stated that we are not proposing a requirement for the retention of test results.

PHMSA requested comments on the role of vapor pressure in classifying flammable liquids and selecting packagings, as well as whether vapor pressure thresholds should be established. Under existing requirements and those proposed in this final rule, shippers must select all appropriate tests for the changing factors appropriate to the location and nature of their activities, and follow requirements under § 173.115 relating to vapor pressure when applicable. Individuals, government organizations, and environmental groups such as Delaware Riverkeeper Network supported mandating vapor pressure testing to increase safety and accuracy. Environmental groups and offeror Quantum Energy also suggested packaging selection should be based on vapor pressure. Industry stakeholders, such as the Dangerous Goods Advisory Council (DGAC) and AFPM stated vapor pressure testing was unnecessary.

PHMSA did not propose any other specific changes related to vapor pressure in the NPRM and, as such, is not adopting any such requirements. We appreciate the comments received on this issue and will consider them in any future action.

PHMSA has continued its testing and sampling activities and refined the collection methods. As mentioned previously, PHMSA has purchased closed syringe-style cylinders and is collecting samples using these cylinders. Utilizing these types of cylinders minimizes the opportunity for any dissolved gases to be lost during collection, thus providing increased accuracy. In addition, PHMSA has taken samples at other shale play locations around the United States to compare their characteristics to that of crude oil from the Bakken region. PHMSA continues to examine the role of vapor pressure in the proper classification of crude oils and other flammable liquids. Further we continue to explore collaborative research opportunities examining the classification of flammable liquids. Any specific regulatory changes related to vapor pressure would consider further research and be handled in a future rulemaking.

Furthermore, since the publication of the NPRM, the North Dakota Industrial Commission issued Oil Conditioning Order No. 25417, which requires operators of Bakken crude oil produced in the state of North Dakota to separate the gaseous and light hydrocarbons from all Bakken crude oil that is to be transported. The order also prohibits blending of Bakken crude oil with specific materials.[92]

PHMSA appreciates any action that improves the safe transportation of crude oil or other hazardous material. As with any hazardous material put into transportation by any mode, safety is our top priority, and we will continue to conduct inspections or bring enforcement actions to assure that shippers comply with their responsibilities to properly characterize, classify, and package crude oil regardless of how it is treated prior to transport. We also continue to work with various stakeholders, including other government agencies such as the Department of Energy, to understand best practices for testing and classifying crude oil. See also Section VI ''Crude Oil Treatment'' for additional discussion on this issue.

This comprehensive rule seeks to improve the safety of bulk shipment of all flammable liquids across all packing groups, and is not limited to Bakken crude. The enhanced tank car standards and operational controls for high-hazard flammable trains are not directly impacted by the order recently imposed in North Dakota. Any specific regulatory changes related to treatment of crude oil would consider further research and be handled in a separate action.

[92] *https://www.dmr.nd.gov/oilgas/Approved-or25417.pdf.*

Commenters suggested other changes affecting the applicability of the sampling and testing program. AFPM recommended addressing ''exemptions'' or ''less prescriptive alternatives.'' Some trade associations suggested exempting materials from requirements for the classification program when transported in DOT–117s. Other commenters suggested exempting petroleum crude oil from the sampling requirements when assigned to packing group I or when crude oil is pre-treated. Commenters also recommended changes to the packing group assignment and classification process for Class 3. Environmental groups recommended requiring either Bakken crude oil or all petroleum crude oil to be classified as Packing Group I. Industry stakeholders agreed that crude oil should be permitted to be classified as packing group III. AAR recommended prohibiting use of the combustible liquid reclassification criteria for petroleum crude oil. Government representatives, environmental groups and individuals suggested prohibiting the use of Packing Group III for Class 3 flammable liquids.

In the NPRM, PHMSA asked how to provide flexibility and relax the sampling and testing requirements for offerors who voluntarily use the safest packaging and equipment replacement standards. However, we did not propose exemptions from the sampling and testing program or changes to the assignment of packing groups for petroleum crude oil or in the NPRM and, as such, is not adopting any such requirements. The current hazard classification criteria are sufficient for assigning packing group when proper sampling and testing occurs. We disagree that pre-treatment of crude oil, use of DOT–117 tank cars, or other exemptions discussed by commenters adequately ensures the safest packaging and equipment replacement standards to justify opting out of the sampling and testing requirements for the materials adopted by this rulemaking. Furthermore, these exemptions do not provide an equivalent level of safety for identifying properties to ensure compliance with packaging requirements in Part 173. The sampling and testing program is important to accurately classify these materials for transportation and fully comply with the packaging and operational controls in the HMR. Therefore, we are not limiting the assignment of packaging group for petroleum crude oil, or providing exceptions to the sampling and testing program for applicable materials.

Conclusion

Based on the justification above, PHMSA is adopting the proposed standardized sampling and testing program requirements for unrefined petroleum-based products with changes intended to clarify the intent of requirements. This sampling and testing program requirements for unrefined petroleum-based products will be codified in the new § 173.41. We are not incorporating API RP 3000 by reference. However, shippers may still use API RP 3000 as a voluntary way to comply with the newly adopted sampling requirements. It should be noted that all of the testing provisions of API RP 3000 do not align with the requirements in the HMR. As the testing provisions were not proposed to be modified, shippers must continue to use the testing methods for classification of flammable liquids outlined in § 173.120 and flammable gases in § 173.115. It should be noted that PHMSA may consider the adoption of the non-codified testing provisions of API RP 3000 in a future rulemaking.

F. Routing

PHMSA proposed in the August 1, 2014 NPRM, in § 174.310(a)(1), to modify the rail routing requirements specified in § 172.820 to apply to any HHFT. The routing requirements discussed in the NPRM reflect the practices recommended by the NTSB in recommendation R–14–4, and are in widespread use across the rail industry for security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). As a result, rail carriers would be required to assess available routes using, at a minimum, the 27 factors listed in Appendix D to Part 172 (hereafter referred to as Appendix D) of the HMR to determine the safest, most secure routes for security-sensitive hazardous materials. Additionally, the requirements of § 172.820(g) require rail carriers to establish a point of contact with state and/or regional fusion centers who coordinate with state, local, and tribal officials on security issues as well as state, local, and tribal officials that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions. This requirement will in essence capture threshold notification requirements for HHFTs as discussed in further detail in the next section.

In response to the proposed amendments to routing, we received comments representing approximately 87,359 signatories. An overwhelming majority of commenters expressed support for additional routing requirements for HHFTs. The majority of commenters supported the amendment as proposed in the NPRM; however, some commenters supported the expansion of the routing requirements beyond what was in the NPRM. Some industry commenters expressed opposition to additional routing requirements for HHFTs. Commenters also took the opportunity to identify other issues related to routing beyond the proposal to require rail carriers who transport HHFTs to perform routing assessments. Below is a table detailing the types and amounts of commenters on the routing proposal.

TABLE 32—COMMENTER COMPOSITION: ROUTING COMMENTS

Commenter type	Signatories
Non-Government Organization	85,017
Individuals	2,292
Industry stakeholders	20
Government organizations or representatives	30
Totals	87,359

Commenters who either supported the proposal in the NPRM or the expansion of the proposal in the NPRM were primarily concerned members of the public, environmental groups, tribal communities, local governments, and Congressional representatives. Commenters in support, such as Congressman Michael E. Capuano, recognized the value of expanding the scope of the route planning regulations to include routing HHFTs away from dense population centers and environmentally sensitive areas, stating, ''I fully support requiring HHFT carriers to perform a routing risk analysis and then select their route based on the findings of that analysis.''

Additionally, the NTSB commented, ''we believe that the proposed rule, if implemented, would satisfy the intent of Safety Recommendation R–14–4,'' which urges an expansion of the route planning requirements to include trains transporting flammable liquids.

The Prairie Island Indian Community provided a specific example of a community that could be directly affected by the implementation of the routing requirements. They noted that their community is home to ''hundreds of tribal member residents, potentially thousands of visitors and employees at the Treasure Island Resort and Casino, a dry cask storage facility currently hosting 988 metric tons of spent nuclear fuel, an operating nuclear power plant with two reactors and approximately

635 metric tons of spent nuclear fuel in the fuel pool.'' They noted that ''if ever there was a case for rail routing risk assessment, this is it.'' With this, the Prairie Island Indian Community provided their support for implementing routing requirements for HHFTs.

Some commenters proposed expanding upon the existing risk factors listed in appendix D. Recommended expansions to appendix D included a factor to avoid routes that pass through areas that experience a high density of commuters at peak times. Additionally, environmental groups and concerned public urged considering a route's proximity to watersheds and water supplies. Environmental advocate Scenic Hudson, Inc. commented that the route assessment should include avoiding National Parks and other historical landmarks, such as those identified by the National Trust for Historic Preservation or designated as National Heritage Areas by Congress.

PHMSA and FRA recognize the assertion by some commenters that the list of 27 risk factors in appendix D should be expanded to address various additional specific risk factors. These comments are beyond the scope of this rulemaking. In the NPRM, PHMSA and FRA did not propose revisions to appendix D, nor did we solicit comments on revising the current list of risk factors in appendix D. However, given the number of concerns raised by commenters on this particular issue, PHMSA and FRA believe it is important to clarify that the 27 factors currently listed in appendix D are inclusive of the more specific factors that several commenters suggested adding to the list. For example, ''watersheds'' are expected to be considered under risk factor number 13 in appendix D entitled ''environmentally sensitive or significant areas'', and ''national landmarks'' are expected to be considered in risk factor number 12 entitled ''proximity to iconic targets.'' Also, it is important to emphasize that, in addition to numerous other factors, a route assessment must address venues along a route (stations, events, places of congregation), areas of high consequence, population density, and the presence of passenger traffic along a route. Hence, the concerns raised by commenters, while beyond the scope of this rulemaking, are generally already addressed by the risk factors in appendix D.

Commenters also expressed concerns regarding the risk analysis done by rail carriers and how that information is used, shared or evaluated. Many commenters shared concern that routing choices by carriers are not disclosed to the public and are kept secret. Some commenters also supported increased oversight of routing analyses, either through evaluation by a third party or governmental entities.

These route analysis and selection requirements exist for the transportation of security-sensitive materials, such as poisonous-by-inhalation materials, certain explosives and certain radioactive materials. As such, information about the analyses and routes of shipments should only be released to those with a need-to-know, in order to maintain confidentiality for both business and security purposes. In accordance with voluntary practices and existing requirements, including the Secretary's May 7, 2014 Emergency Order (Docket No. DOT–OST–2014–0067), routing information is shared with appropriate state, local, and Tribal authorities.

Furthermore, as § 172.820(e) states, rail carriers must restrict the distribution, disclosure, and availability of information contained in all route review and selection decision documentation (including, but not limited to, comparative analyses, charts, graphics or rail system maps) to covered persons with a need-to-know, as described in 49 U.S.C. Parts 15 and 1520, which govern the protection of sensitive security information. DOT provides oversight for route analysis, selection and updating. As § 172.820(e) provides, rail carriers must maintain all route review and selection documentation, which DOT may review in the course of its regulatory and enforcement authority. Specifically, FRA personnel oversee compliance with routing regulations by completion of regular security audits of Class I and shortline railroads (Class II and III). Part of the security audit involves review of route selection documentation to ensure that the selection was completed, documented, and considered the appropriate risk factors specified in appendix D to part 172.

Additionally, PHMSA and FRA received comments that supported allowing an ''opt out'' for communities to choose not to allow HHFTs to be transported through their areas. Additionally, King County, WA voiced support for the proposed requirements, but urged the use of the information gathered from the route analyses to identify critical infrastructure needs along a route such as additional crossing gates, signals and track integrity to avoid collision and derailment.

PHMSA believes these comments are outside the scope of the requirements proposed in the NPRM. PHMSA did not propose any provisions for communities to make unilateral decisions to disallow HHFT shipments, and such a requirement may call into question issues of preemption. Also, local government crude by rail prohibitions could have detrimental impacts on the fluidity of the entire national rail network, including passenger service. With respect to the use of route analysis information for the purpose of improving infrastructure, PHMSA and FRA believe that by expanding the routing requirements to HHFTs, more routes will be analyzed, and infrastructure needs will be identified by the railroads as an indirect benefit. However, codifying the use of this information for purposes beyond route analysis and selection was not proposed and is outside the scope of this rulemaking.

Commenters who opposed additional routing requirements for HHFTs include trade associations, rail carriers and rail-carrier related businesses. While these commenters represented a minority of those who responded to routing proposals from the NPRM, concerns and issues were raised. The AAR, the Institute for Policy Integrity and the Illinois Commerce Commission (ICC) state that PHMSA needs to be aware of the implications of expanding the additional routing requirements to HHFTs. These commenters assert that such an expansion will narrow the routes over which HHFTs may operate and will force HHFTs to travel the same lines thus causing distributional effects on the network. AAR stated that network fluidity would be negatively impacted by clogging certain routes. In addition, the ICC stated that the AAR and ASLRRA have put in place voluntary agreements with the Department to mitigate the consequences of an incident, should one occur, and that those are sufficient. A concerned public commenter noted that the number of factors a route analysis should be narrowed from 27 to 5–7.

PHMSA and FRA disagree with comments in opposition to expanding routing requirements to rail carriers transporting HHFTs. We believe that any effects on the network that negatively impact fluidity or distributional effects will be minor compared to the safety benefits of the proposed requirements. Commenters who expressed concern regarding the negative impact that applying routing requirements to HHFTs would have on the rail network did not provide data to support their claims. Additionally, comments implying a strain on the network caused by increased operational requirements focused on

speed restrictions proposed in the NPRM. A route selection performed in accordance with § 172.820(e) does not expressly prohibit a carrier from selecting a particular route. Instead, carriers must use their analysis to select the practicable route posing the least overall safety and security risk. Carriers may also choose to install or activate mitigating measures to address any of the safety and security risks found. Additionally, rail carriers must identify and analyze practicable alternative routes over which it has authority to operate if such an alternate route exists. Furthermore, in accordance with Appendix D, carriers are required to assess a number of factors that would generally be representative of potential network strains or congestion, including assessment of ''rail traffic density'' and ''trip length for route.''

Also, as required by § 172.820(g), a carrier transporting an HHFT will be required to establish a point of contact with a State or regional fusion center, which have been established to coordinate with state, local and tribal officials on security issues. Additionally, a carrier transporting an HHFT will be required to establish a point of contact with state, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions. In turn, state, local, and tribal officials can use this to inform local emergency responders along routes traveled by HHFTs. By limiting the routes HHFTs travel on, it will allow resources for emergency response capabilities to be focused on heavily trafficked routes while minimizing risk to vulnerabilities adjacent to the rail network. PHMSA and FRA believe that this will further bolster the ability for state and local officials to respond to rail related incidents while furthering communication between the railroads and state and local governments and the availability of this information to first responders through established emergency communication networks, such as fusion centers.

Conclusion

Based on the above justification, PHMSA and FRA are modifying the rail routing requirements specified in § 172.820 to apply to any HHFT, as the term is defined in this final rule (§ 171.8; See discussion in HHFT section). We estimate the cost impact to be approximately $15 million, as Class 1 railroads have already been required to perform these analyses for materials already subject to routing requirements (poisonous-by-inhalation, certain explosives, and certain radioactive materials). Therefore, the cost impact is primarily limited to shortline and regional railroads (Class 2 and Class 3). We anticipate this to be a minimal burden on shortline railroads, as they typically operate a single route and therefore would lack alternative routes to analyze. It should be noted that ASLRRA did not comment on this specific proposal.

The amendments in this final rulemaking relating to rail routing will require rail carriers transporting an HHFT to: (1) Conduct an annual route analysis considering, at a minimum, 27 risk factors listed in Appendix D prior to route selection; and (2) identify a point of contact for routing issues, and who to directly contact the railroad to discuss routing decisions, and provide this information to state and/or regional fusion centers and state, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions. In addition, PHMSA and FRA believe that the requirement for rail carriers to establish fusion center contacts will address the need for notification requirements, as discussed in further detail in the ''Notification'' section below. By not adopting the separate notification requirements proposed in the NPRM and instead relying on the expansion of the existing route analysis and consultation requirements of § 172.820, to include HHFTs, we are focusing on the overall hazardous materials regulatory scheme.

G. Notification

On May 7, 2014, DOT issued an Emergency Order (''the Order'') requiring each railroad transporting one million gallons or more of Bakken crude oil in a single train in commerce within the U.S. to provide certain information in writing to the State Emergency Response Commissions (SERCs) for each state in which it operates such a train. The notification made under the Order must include estimated frequencies of affected trains transporting Bakken crude oil through each county in the state, the routes over which it is transported, a description of the petroleum crude oil and applicable emergency response information, and contact information for at least one responsible party at the host railroads. In addition, the Order required that railroads provide copies of notifications made to each SERC to FRA upon request and to update the notifications when Bakken crude oil traffic materially changes within a particular county or state (a material change consists of 25 percent or greater difference from the estimate conveyed to a state in the current notification). DOT issued the Order under the Secretary's authority to stop imminent hazards at 49 U.S.C. 5121(d). The Order was issued in response to the crude oil railroad accidents previously described, and it is in effect until DOT rescinds the Order or a final rule codifies requirements and supplants the requirements in the Order.

In the August 1, 2014, NPRM, PHMSA proposed to codify and clarify the requirements of the Order and requested public comment on the various parts of the proposal. As also previously discussed, there have been several significant train accidents involving crude oil in the U.S. and Canada over the past several years, resulting in deaths, injuries, and property and environmental damage. These accidents have demonstrated the need for improved awareness of communities and first responders of train movements carrying large quantities of hazardous materials through their communities, and thus being prepared for any necessary emergency response.

In the August 1, 2014, NPRM, PHMSA specifically proposed to add a new section (§ 174.310), ''Requirements for the operation of high-hazard flammable trains,'' to subpart G of part 174. We proposed notification requirements in paragraph (a)(2) of this section. Unlike many other requirements in the August 1, 2014 NPRM the notification requirements were specific to a single train that contains one million gallons or more of UN 1267, Petroleum crude oil, Class 3, as described by § 172.101 of this subchapter and sourced from the Bakken shale formation in the Williston Basin (North Dakota, South Dakota, and Montana in the United States, or Saskatchewan or Manitoba in Canada). As proposed rail carriers operating trains that transport these materials in this amount would be required to within 30 days of the effective date of the final rule to provide notification to the SERC or other appropriate state delegated entities in which it operates within 30 days of the effective date of the final rule. Information required to be shared with SERCs or other appropriate state delegated entity would include the following:

- A reasonable estimate of the number of affected trains that are expected to travel, per week, through each county within the State;
- The routes over which the affected trains will be transported;
- A description of the petroleum crude oil and applicable emergency response information required by subparts C and G of part 172 of this subchapter; and,

• At least one point of contact at the railroad (including name, title, phone number and address) responsible for serving as the point of contact for the State Emergency Response Commission and relevant emergency responders related to the railroad's transportation of affected trains.

In addition, as proposed in the August 1, 2014 NPRM, railroads would be required to update notifications prior to making any material changes in the estimated volumes or frequencies of trains traveling through a county and provide copies to FRA upon request. In response to the proposed notification requirement for rail shipments of crude oil, we received a number of comments representing approximately 99,856 signatories.

TABLE 33—COMMENTER COMPOSITION: NOTIFICATION

Commenter type	Signatories
Non-Government Organization	90,869
Individuals	8,888
Industry stakeholders	22
Government organizations or representatives	77
Totals	99,856

Overall, the vast majority of commenters support PHMSA's efforts to establish some level of notification requirements for the operation of trains carrying crude oil as proposed in 49 CFR 174.310(a)(2). However, they are divided on certain aspects of the proposed notification to SERCs of petroleum crude oil train transportation. The overwhelming majority of commenters suggested a lower threshold to trigger the notification requirements. In the NPRM, PHMSA proposed a threshold of one million gallons for a single train containing UN1267, Petroleum crude oil, Class III, sourced from the Bakken region. With near unanimity, commenters believe the one million gallons threshold is too high and the idea of limiting it to just Bakken crude oil was too narrow (*e.g.,* include all crude oils from all areas, or include all Class III flammable liquids). In general, comments fell into one of four categories related to proposed notification requirements: (1) Defining threshold requirements that trigger notification; (2) notification applicability and emergency response; (3) public dissemination/sensitive information; and 4) defining commodity type for notification purposes. These comments are discussed in further detail below.

In the NPRM, PHMSA proposed regulations consistent with the Order (*i.e.,* trains transporting one million gallons or more of Bakken crude oil). Assuming that 29,000-gallons of crude oil are contained in each tank car, approximately 35 tank cars in a train would trigger the notification requirement. For purposes of the Order, DOT had previously assumed that this was a reasonable threshold when considering that the major incidents described in the NPRM all involved trains consisting of more than 70 tank car tanks carrying petroleum crude oil, or well above the threshold of one million gallons. The threshold in the Order was based on a Federal Water Pollution Control Act mandate for regulations requiring a comprehensive spill response plan to be prepared by an owner or operator of an onshore facility.[93]

Again, the majority of commenters who expressed their viewpoints regarding the proposed notification requirements asked for PHMSA to lower the threshold and therefore expand the applicability of notification requirements. For example, the NTSB commented that ''[a] threshold of one million gallons (approximately 35 tank car loads) is significantly above a reasonable risk threshold and should be lower. At a minimum the threshold should be set no higher than the value of an HHFT (20 cars).'' These proposals were echoed by the environmental groups, congressional interest, the concerned public, and in particular the Massachusetts Water Resources Authority and Division of Emergency Management. Other commenters such as Flat Head Lakers suggested an even lower threshold; for example, ''[t]he threshold for this reporting requirement should be 35,000 gallons per train; the amount carried by one tank car, rather than one million gallons.'' To further illustrate the point, some commenters such as Powder River Basin wanted the notification threshold reduced even more by stating ''[w]e ask DOT to broaden its advance notification requirements to include all trains transporting any quantity of Class III (flammable liquid) material.'' Finally, the Wasatch Clean Air Coalition suggested the lowest threshold possible, stating ''SERCs should be notified of residue'' when crude oil trains are passing through their States. We received only one opposing comment that the requirements were too strict from AFPM, which said ''SERC notifications should be tied to shipments of crude oil or ethanol in 'unit trains,' meaning trains that have 75 cars or more shipping crude oil or ethanol.'' This viewpoint is significantly greater than the one million gallons trigger proposed in the NPRM.

DOT agrees with the majority of commenters who believe the one million gallons threshold for triggering the notification requirements is too lenient. As previously noted, the order required ''each railroad transporting one million gallons or more of Bakken crude oil in a single train in commerce within the U.S. provide certain information in writing to SERCs for each state in which it operates such a train.'' After careful consideration of the comments and after discussions within PHMSA and FRA, we believe that using the definition of the HHFT for notification applicability is a more conservative approach for affecting safer rail transportation of flammable liquid material, and it is a more consistent approach because it aligns with the proposed changes to other operational requirements, including routing. Furthermore, the routing requirements adopted in this final rule reflect the substance of NTSB Safety Recommendation R–14–4, and are in widespread use across the rail industry for security-sensitive hazardous materials (such as chlorine and anhydrous ammonia).

Each state is required to have a SERC under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). 42 U.S.C. 11001(a). The EPCRA is intended to help local entities plan for emergencies involving hazardous substances.[94] Generally, SERCs are responsible for supervising and coordinating with the local emergency planning committees (LEPC) in states, and are best situated to convey information regarding hazardous materials shipments to LEPCs and state and local emergency response agencies. At the time of the issuance of the Order, DOT determined that SERCs were the most appropriate recipient of written notifications regarding the trains transporting large quantities of Bakken crude oil. After issuance of the Order, the railroads requested that the fusion centers be permitted as an appropriate point of contact to satisfy notification requirements. Railroads already share information with fusion centers under

[93] *See* 40 CFR 112.20. The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, directs the President, at section 311(j)(1)(C) (33 U.S.C. 1321(j)(1)(C)) and section 311(j)(5) (33 U.S.C. 1321(j)(5)), respectively, to issue regulations ''establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.''

[94] *http://www2.epa.gov/epcra.*

existing § 172.820 of the HMR, PHMSA's regulation governing additional planning requirements for transportation by rail of certain hazardous materials and thus many have an established relationship with these entities. DOT had also received inquiries regarding the Order's implications for Tribal Emergency Response Commissions (TERCs). TERCs have the same responsibilities as SERCs, with the Chief Executive Office of the Tribe appointing the TERC.[95]

In response to this request and other questions regarding the order, DOT issued a Frequently Asked Questions (FAQs) guidance document to address these inquiries.[96] In that document, DOT explained that if a State agrees it would be advantageous for the information required by the Order to be shared with a fusion center or other State agency involved with emergency response planning and/or preparedness, as opposed to the SERC, a railroad may share the required information with that agency instead of the SERC. DOT also explained that railroads were not required to make notification under the Order to TERCs, but, rather, that DOT would be reaching out to Tribal leaders to inform them that TERCs could coordinate with the appropriate SERC in a state for access to data supplied under the Order.

In the NPRM, PHMSA proposed requirements for notification to SERCs consistent with the notification language of the Order (*i.e.,* trains transporting one million gallons or more of Bakken crude oil). Notification made under the Order had to include estimated frequencies of affected trains in each county in the state, their routes, a product description and emergency response information, and contact information.

Commenters had varied opinions regarding who the appropriate recipient of this information should be (*e.g.* SERCs, fusion centers, emergency responders, etc.). For example, the NTSB stated that DOT should ''codify Safety Recommendation R–14–14, which recommends that PHMSA require railroads transporting hazardous materials through communities to provide emergency responders and local and state emergency planning committees with current commodity flow data and assist with development of emergency operations and response plans.'' The NTSB further stated that DOT should ''codify Safety Recommendation R–14–19, which recommends that PHMSA require railroads transporting hazardous materials to develop, implement, and periodically evaluate a public education program similar to 49 CFR 192.616 and 195.440 for the communities along railroad hazardous materials routes.''

Environmental groups such as the Sierra Club commented that ''rail operators carrying volatile crude in any amount must be required to notify states and emergency responders of the crude compositions, quantities, and frequency of transport; and that this information must be made available to the public.'' Some commenters wanted the notification applicability expanded greatly, and Delaware Riverkeeper Network noted that SERCs should be ''notified of sampling and testing results, and that those results should be made available to the general public, SERCs, the DOT, fusion centers, Tribal emergency responders, and local [emergency responders] ERs.'' Numerous commenters also stated that they believed ''local emergency responders should be provided with information about all hazmat traveling through their jurisdictions,'' including villages, towns, and cities. Some commenters also provided general support for notification requirements described in AAR Circular No. OT–55–N,[97] which contains the recommended railroad operating practices for transportation of hazardous materials. Finally, the Prairie Island Indian Community touched on the issue of including TERCs in that ''unfortunately there was no mention of notifying Tribal Emergency Response Commissions (TERC). Indian tribes have the same responsibilities and obligations under the Emergency Preparedness and Community Right-to-Know Act (EPCRA) passed by Congress in 1986. EPCRA established requirements for federal, state and local governments, Indian tribes, and industry regarding emergency planning and Community Right-to-Know reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions were meant to increase public knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.''

DOT agrees with the general scope of the commenters who suggested making more information available for first responders and emergency planners, but we disagree on the best method to disseminate the information to the members of this community. As previously noted, the Order required ''each railroad transporting one million gallons or more of Bakken crude oil in a single train in commerce within the U.S. provide certain information in writing to the SERCs for each state in which it operates such a train.'' While we proposed the same language in the NPRM as it related to setting up the notification requirements and the SERCs, after careful review of the comments and discussions within PHMSA and FRA, we believe that using the definition of the HHFT for notification applicability and emergency response is appropriate. This will align it with the proposed changes to the § 172.820 requirements, and since those will be expanded to apply to HHFTs, the notification requirements in paragraph (g) of § 172.820 will now cover all flammable liquids transported in an HHFT, including crude oil and ethanol. The expansion of the routing requirements and deferring to the reporting requirements therein, as adopted in this final rule, reflect the NTSB recommendation R–14–4, and enable industry to make use of current practices for security-sensitive hazardous materials (such as chlorine and anhydrous ammonia).

After issuance of the Order, railroads were concerned that certain routing and traffic information about crude oil transport required to be provided to SERCs would be made available to the public under individual states' ''Sunshine'' laws. DOT engaged in discussions with railroads and invited states to participate to address this valid concern, and the FAQ document was the outcome of those discussions. As is explained in the aforementioned FAQ document, DOT preferred that this information be kept confidential, and acknowledged that railroads may have an appropriate claim that this information constitutes confidential business information, but that such claims may differ by state depending on each state's applicable laws. DOT also encouraged the railroads to work with states to find the most appropriate means for sharing this information (including fusion centers or other mechanisms that may have established confidentiality protocols). However, the Order and DOT's subsequent guidance did not require nor clarify that states sign confidentiality agreements to receive this information, and did not designate or clarify that the information could be considered Sensitive Security Information (SSI) under the procedures governing such information at 49 CFR part 15. DOT understands that despite confidentiality concerns, railroads are complying with the requirements of the

[95] *http://www2.epa.gov/sites/production/files/2013-08/documents/epcra_fact_sheet.pdf.*

[96] *http://www.fra.dot.gov/eLib/Details/L05237.*

[97] *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0009.*

Order and have provided the required information to States.

In the NPRM, PHMSA proposed notification requirements consistent with the Order. However, we did not include any specific language regarding public access to sensitive information requirements, but we did ask readers to comment on two questions: (1) Whether PHMSA should place restrictions in the HMR on the disclosure of the notification information provided to SERCs or to another state or local government entity; and (2) Whether such information should be deemed SSI, and the reasons indicating why such a determination is appropriate, considering safety, security, and the public's interest in this information.

Commenters had varying opinions on this issue. A concerned member of the public indicated, ''I do NOT recommend that the public be informed of train schedules due to terrorism concerns,'' while others asserted, ''I support the community's right to know,'' and ''residents within the zone around train routes that could be affected need to know what's going through their communities and over their water supplies, where it will pass and when, in order to make decisions about personal exposure.'' Environmental groups including Earthjustice, Forest Ethics, Sierra Club, NRDC, and Oil Change International commented, ''[t]here should be no restrictions on the disclosure of information provided to SERCs or other emergency responders.'' The NTSB stated, ''[c]lassifying route information about hazardous materials as SSI would unreasonably restrict the public's access to information that is important to safety. While the general public may not require detailed information such as: Numbers, dates, and times — people should know if they live or work near a hazardous materials route.''

Certain industry groups, like the AFPM, suggested that ''PHMSA should clarify that SERC notifications are sensitive security information exempt from state Freedom of Information Acts and sunshine laws.'' As for rail carriers, many of them supported Great Northern Midstream's assertion that ''disclosing private information in the public domain with respect to origination and destination, shipper designation or otherwise, introduces the potential for act of terrorism with no corresponding benefit from such disclosure.'' It went on to say that PHMSA must ''mandate to preempt state law requiring notification to any party other than emergency response (*i.e.,* no public dissemination).'' Petroleum storage and distribution services companies like Plains Marketing said that while it ''recognize[s] that providing this information allows local first responders to better prepare to respond to accidents, we do caution PHMSA that providing this information could be in conflict with confidentiality requirements, and that PHMSA should ensure that the disclosure is limited to only emergency responders and related agencies.'' Other government groups, like the National Association of SARA Title III said, ''rail carriers may designate the information being provided as a trade secret or as security sensitive, but may not demand that the SERCs or other recipients sign nondisclosure agreements.'' However, concerned public commenter K. Denise Rucker Krepp, former MARAD Chief Counsel and former Senior Counsel, U.S. House of Representatives Homeland Security Committee, said:

> The Department of Transportation cannot limit the sharing of information to State Emergency Response Commissions to trains containing more than one million gallons of Bakken crude oil. Railroad carriers are required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act, Public Law 110–53) to share all routing and cargo shipment information with state, local, and tribal authorities. Section 1512 of the 9/11 Act requires railroad carriers to conduct vulnerability assessments and draft security plans. The Department of Homeland Security (DHS) is required to review these assessments and plans in consultation with public safety and law enforcement officials. DHS can't properly consult with these officials if they don't know what is being transported through their jurisdiction. Similarly, DHS can't seek input from state and local officials if they don't know the routes by which the goods are being transported.

Finally, Senators Wyden, Merkley, Boxer, and Feinstein stated, ''[b]ecause railroads provide crude oil routes online, reporting information to emergency responders (with no limits on 'information sharing') should not pose additional security concern.''

DOT agrees with the commenters that this is a difficult and complex issue, and widespread access to security sensitive information could be used for criminal purposes when it comes to crude oil by rail transportation. For example, the FBI and the federal Bureau of Alcohol, Tobacco, Firearms and Explosives are participating in a vandalism investigation of a November 2014 incident in Vivian, S.D., where a two-foot piece of the rail line was blown up using the explosive tannerite.[98] As discussed before, DOT prefers that this information be kept confidential for security reasons, and acknowledges that railroads may have an appropriate claim that this information constitutes confidential business information, but that such claims may differ by state depending on each state's applicable laws. DOT has also encouraged the railroads to work with states to find the most appropriate means for sharing this information (including fusion centers or other mechanisms that may have established confidentiality protocols). After careful review of the comments and after discussions within PHMSA and FRA, we believe that adopting the notification (and information sharing) process associated with the additional planning requirements under § 172.820 is the best approach. Under this approach, the transportation of crude oil by rail (or any other flammable liquid carried as part of a HHFT) can: (1) Avoid the negative security and business implications of widespread public disclosure of routing and volume data; and (2) preserve the intent of the Order to enhance information sharing with emergency responders by utilizing fusion centers as they have established protocols for communicating with emergency responders on hazmat rail issues as indicated in the following passage from the Frequently Asked Questions on DOT's May 7, 2014 Emergency Order Regarding Notification to Communities of Bakken Crude Oil Shipments: [99]

> Fusion Centers are established on a State and regional basis, with one of their purposes being to share emergency response information. Railroads currently routinely share data on their shipments with Fusion Centers. Given that railroads and Fusion Centers have already established protocols for sharing information under existing confidentiality agreements, in some situations, there might be advantages to States and railroads in utilizing Fusion Centers instead of SERCs for the sharing of information required by this EO. DOT also noted that there is an existing mechanism for Tribal Nations to interact with the Fusion Centers through the State, Local, Tribal and Territorial Government Coordinating Council. Similarly, DOT recognizes that individual States may have an agency other than the SERC or Fusion Center that is more directly involved in emergency response planning and preparedness than either the SERC or Fusion Center.[100]

Expansion of the routing requirements in this final rule addresses the NTSB's recommendation R–14–4 and are in widespread use across the rail industry

[98] ''Railroad Vandalism in South Dakota Under Investigation,'' *http://www.ksfy.com/home/headlines/Railroad-vandalism-in-South-Dakota-under-investigation-285018691.html.*

[99] *http://www.fra.dot.gov/Elib/Document/3873.*

[100] *http://www.fra.dot.gov/Elib/Document/3873.*

for security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). Additionally, AAR Circular OT–55–N outlines a procedure whereby a community may request a list of the types and volumes of hazardous materials that are transported through the community so that emergency responders can plan and prepare.

In addition, on January 27, 2015, AAR's Safety and Operations Management Committee approved changes to OT–55 (AAR Circular No. OT–55–O), and those changes became effective January 27, 2015, and superseded OT–55–N, which was previously issued August 5, 2013. AAR's OT–55–O revised the Transportation Community Awareness and Emergency Response Implementation (TRANSCAER®) program listed in Section V. Section V states that ''railroads will assist in implementing TRANSCAER, a system-wide community outreach program to improve community awareness, emergency planning and incident response for the transportation of hazardous materials.'' Specifically, the key revised text of OT–55–O ''[u]pon written request, AAR members will provide bona fide emergency response agencies or planning groups with specific commodity flow information covering all hazardous commodities transported through the community for a 12 month period in rank order.''

The request must be made using the form included as Appendix 3 by an official emergency response or planning group with a cover letter on appropriate letterhead bearing an authorized signature. The form reflects the fact that the railroad industry considers this information to be restricted information of a security sensitive nature and that the recipient of the information must agree to release the information only to bona fide emergency response planning and response organizations and not distribute the information publicly in whole or in part without the individual railroad's express written permission. It should be noted that commercial requirements change over time, and it is possible that a hazardous materials transported tomorrow might not be included in the specific commodity flow information provided upon request, since that information was not available at the time the list was provided.

In summary, Section V is now revised to require ''all hazardous commodities transported through the community for a 12 month period in rank order'' instead of just the top 25 commodities. In addition, Section V was inserted with a 12 month period, which will help emergency response agencies or planning groups in planning for a whole year.

In the NPRM, PHMSA proposed regulatory text consistent with the Order which specified notification of information regarding the transportation specific to Bakken crude oil. With regard to singling out Bakken crude oil from crude oil extracted from other geographic locations, DOT acknowledges that under the current shipping paper requirements there is no distinction between Bakken crude oil and crude oil sourced from other locations. This may present compliance and enforcement difficulties, particularly with regard to downstream transportation of Bakken crude oil by railroads after interchange(s) with an originating or subsequent rail carrier. Previously, DOT explained in the FAQs document that railroads and offerors should work together to develop a means for identifying Bakken crude oil prior to transport, such as a designating a Standard Transportation Commodity Code (STCC) that would identify crude oil by its geographic source. DOT also stated that for purposes of compliance with the Order, crude oil tendered to railroads for transportation from any facility directly located within the Williston Basin (North Dakota, South Dakota, and Montana in the United States, or Saskatchewan or Manitoba in Canada) is Bakken crude oil.

In the NPRM, PHMSA solicited comments surrounding commodity type, and if the applicability of notification requirements should be expanded to include threshold quantities of all petroleum crude oils or all HHFTs (versus only trains transporting threshold quantities of Bakken crude oil), and even commodity types (*e.g.,* ethanol, etc.).

Commenters generally stated that crude oil sourced from the Bakken shale formation should not be the only determining factor of commodity type for notification purposes. Congressman Michael Capuano stated that he ''supports carrier notification for both Bakken crude oil and ethanol shipments.'' Environmental groups, like Powder River Basin, have the view that ''any quantity of Class III (flammable liquid) material, including combustible liquids'' should be included, ''not just Bakken crude oil.'' Trade associations, like the Independent Petroleum Association of America (IPAA), assert that it ''do[es] not support any distinction between Bakken crude and other oil types.'' The NTSB echoed these opinions and said, ''SERC notification requirements should extend to ethanol due to similar risks in a pool fire to crude oil,'' and that ''SERC notification requirements should extend to crude oil sourced from other regions, not just the Bakken formation, since Bakken crude is not significantly different from other crude oil or flammable liquids.'' Local communities, cities, and towns were consistent in their belief as expressed by the City and County of Denver that ''notification requirement should be extended to apply to all HHFTs, not only those transporting Bakken petroleum crude oil.'' NGO's like the National Fire Protection Association (NFPA) thought that ''all crude oil and ethanol should be included'' and that ''NFPA has not found any reference to similar requirements on notification of SERCs regarding ethanol train transportation. This seems to be an omission in this proposed rulemaking and NFPA questions whether there should be a companion requirement that applies specifically to ethanol.'' Rail carriers believe, as expressed by Continental Resources, Inc., that ''all petroleum crude oil'' should be included, and that there is ''no significant difference between Bakken and other crude. Also, [we] do not support a separate STC code for Bakken.''

DOT agrees with comments that Bakken crude oil should not be the determining factor (with respect to a commodity type) for notification requirements. As previously noted, the Order required ''each railroad transporting one million gallons or more of Bakken crude oil in a single train in commerce within the U.S. provide certain information in writing to the SERCs for each state in which it operates such a train.'' Although we were consistent with this instruction in the NPRM, we now agree with the vast majority of commenters that applicability should be broadened to include more commodity types and/or source locations of crude oil. This final rule invokes the notification requirements for HHFT. This aligns it with the proposed changes to the § 172.820 requirements which also will now apply to HHFTs, and thus, the associated notification requirements in paragraph (g) of § 172.820 will now cover more than crude oil sourced from the Bakken formation and more commodity types (*e.g.,* ethanol).

Conclusion

Based on the above discussion, PHMSA and FRA are removing the notification requirement language proposed in the NPRM under § 174.310(a)(2) and is instead using as a substitute the contact information

language requirement that is already part of the additional planning requirements for transportation by rail found in § 172.820 of the HMR that now applies to HHFTs. As provided in § 172.820(g), each HHFT must identify a point of contact (including the name, title, phone number and email address) related to routing of materials identified in § 172.820 in its security plan and provide this information to: (1) State and/or regional fusion centers (established to coordinate with state, local and tribal officials on security issues and which are located within the area encompassed by the rail carrier's system); and (2) State, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.

Not adopting the separate notification requirements proposed in the NPRM and instead relying on the expansion of the existing route analysis and consultation requirements of § 172.820 to include HHFTs would allow this change to function within the overall hazardous materials regulatory scheme. This provides for consistency of notification requirements for rail carriers transporting material subject to routing requirements, *i.e.,* trains carrying: (1) More than 2,268 kg (5,000 lbs.) in a single carload of a Division 1.1, 1.2 or 1.3 explosive; (2) a quantity of a material poisonous by inhalation in a single bulk packaging; (3) a highway route-controlled quantity of a Class 7 (radioactive) material; and now (4) Class 3 flammable liquid as part of a high-hazard flammable train (as defined in § 171.8). Specifically, a single train carrying 20 or more carloads of a Class III flammable liquid in a continuous block or a single train carrying 35 or more tank cars of a Class III flammable liquid across the train consist will have to comply with the additional planning requirements for transportation by rail in § 172.820.

VIII. Section by Section Review

Section 171.7

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Section 171.7 lists all standards incorporated by reference into the HMR and informational materials not requiring incorporation by reference. The informational materials not requiring incorporation by reference are noted throughout the HMR and provide best practices and additional safety measures that while not mandatory, may enhance safety and compliance. In this final rule, we are redesignating paragraphs (k)(2) through (k)(4) as (k)(3) through (k)(5) and adding a new paragraph (k)(2) to incorporate by reference the AAR Manual of Standards and Recommended Practices, Section C—III, Specifications for Tank Cars, Specification M–1002 (AAR Specifications for Tank Cars), Appendix E, Design Details implemented April 2010.

Section 171.8

Section 171.8 provides definitions and abbreviations used within the HMR. In this final rule, we are adding a new definition for *high-hazard flammable train* meaning, a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist. In addition, in this final rule, we are adding a new definition for *high-hazard flammable unit train* meaning a single train transporting 70 or more loaded tank cars containing Class 3 flammable liquid.

Section 172.820

Section 172.820 prescribes additional safety and security planning requirements for transportation by rail. Paragraph (a) of this section provides the applicability for when a rail carrier must comply with the requirements of this section. In this final rule, we are revising § 172.820(a) to add a new applicability requiring that any rail carrier transporting an HHFT (as defined in § 171.8) must comply with the additional safety and security planning requirements for transportation by rail.

Paragraph (b) of this section requires rail carriers compile commodity data to inform their route analyses. PHMSA is revising this paragraph to account for rail carriers' initial analysis and require that commodity data be compiled no later than 90 days after the end of the calendar year; and that in 2016, the data must be compiled by March 31. In addition, this section requires the initial data cover six months, from July 1, 2015 to December 31, 2015. For their initial analysis, rail carriers are only required to collect data from the six-month period described in this section, additional data may be included, but is not required by this final rule. In this final rule we are providing rail carriers the option to use data for all of 2015 in conducting their initial route analyses. Regardless if six or 12 months of data are used, a rail carrier's initial route analysis and selection process must be completed by March 31, 2016. For subsequent route analyses, commodity data from the entire previous calendar year (*i.e.* 12 months) must be used. PHMSA will amend the HMR in a future action to remove the transitional provision.

Section 173.41

In this final rule, we are adding a new section 173.41 prescribing a sampling and testing program for unrefined petroleum-based products. This section specifies what must be included in a sampling and testing program in paragraph (a). Paragraph (b) of this section requires shippers to certify that unrefined petroleum-based products are offered in accordance with this subchapter, to include the requirements prescribed in paragraph (a). Paragraph (c) provides the requirements for documentation, retention, review and dissemination of the sampling and testing program. Finally, paragraph (d) of this section states that each person required to develop a sampling and testing program make the documentation available upon request to an authorized official of the Department of Transportation.

Section 173.241

Section 173.241 prescribes the bulk packaging requirements for certain low hazard liquids and solid materials which pose a moderate risk. Paragraph (a) provides which specifications of rail tank cars may be used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 HMT. In this final rule, we are revising paragraph (a) to add an authorization for DOT Specification 117 tank cars and to prohibit the use of DOT Specification 111 tank cars for Class 3 (flammable liquids) in Packing Group III in HHFT service, after May 2025. Additionally, we are authorizing the retrofitting of DOT Specification 111 tank cars to allow their use after May 2025 provided they meet the requirements of the DOT–117R specification or the DOT–117P performance standard as specified. Finally, the section notes that conforming retrofitted tank cars are to be marked ''DOT–117R'' and conforming performance standard tank cars are to be marked ''DOT–117P.''

Section 173.242

Section 173.242 prescribes the bulk packaging requirements for certain medium hazard liquids and solids, including solids with dual hazards. Paragraph (a) provides which specifications of rail tank cars may be

used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 HMT. In this final rule, we are revising paragraph (a) to add an authorization for DOT Specification 117 tank cars and to prohibit the use of DOT Specification 111 tank cars for Class 3 (flammable liquids) in Packing Group II and III, in HHFT service, after the dates in the following table unless they meet the performance standard DOT–117P or are retrofitted to meet the requirements of the DOT–117R specification as specified:

Packing group	DOT 111 not authorized after	DOT 111 built to the CPC–1232 industry standard not authorized after
II	May 1, 2023 (non-jacketed and jacketed)	July 1, 2023 (non-jacketed) May 1, 2025 (jacketed).
III	May 1, 2025	May 1, 2025.

Finally, the section notes that conforming retrofitted tank cars are to be marked ''DOT–117R'' and conforming performance standard tank cars are to be marked ''DOT–117P.''

Section 173.243

Section 173.243 prescribes the bulk packaging requirements for certain high-hazard liquids and dual hazard materials which pose a moderate risk. Paragraph (a) provides which specifications of rail cars may be used to transport hazardous materials when directed to this section by Column (8C) of the § 172.101 HMT. In this final rule, we are revising paragraph (a) to add an authorization for DOT Specification 117 tank cars and to prohibit the use of DOT Specification 111 tank cars for Class 3 (flammable liquids) in Packing Group I, in HHFT service, after the dates in the following table unless they are retrofitted to meet the performance standard DOT–117P or the requirements of the DOT–117R specification as specified:

Packing group	DOT 111 not authorized after	DOT 111 built to the CPC–1232 industry standard not authorized after
I	January 1, 2017 (non-jacketed report trigger) January 1, 2018 (non-jacketed) March 1, 2018 (jacketed)	April 1, 2020 (non-jacketed). May 1, 2025 (jacketed).

Finally, the section notes that conforming retrofitted tank cars are to be marked ''DOT–117R'' and conforming performance standard tank cars are to be marked ''DOT–117P.''

Section 174.310

In this final rule, we are adding a new section 174.310 prescribing requirements for the operation of HHFTs. A rail carrier must comply with these additional requirements if they operate an HHFT (as defined in § 171.8). Paragraph (a)(1) requires that any rail carrier operating an HHFT is subject to the additional safety and security planning requirements in § 172.820 (*i.e.* routing). Additionally, Paragraph (a)(2) requires that all trains are limited to a maximum speed of 50 mph. The train is further limited to a maximum speed of 40 mph while that train travels within the limits of high-threat urban areas (HTUAs) as defined in § 1580.3 of this title, unless all tank cars containing a Class 3 flammable liquid meet or exceed the retrofit standard DOT Specification 117R, the DOT Specification 117P performance standards, or the standard for the DOT Specification 117 tank car. Paragraph (a)(3) requires HHFTs and HHFUTs must also be equipped with advanced brake signal propagation systems as specified. Paragraph (a)(4) states this new section also requires that a tank car manufactured for use in a HHFT must meet DOT Specification 117, or 117P in part 179, subpart D of this subchapter or an authorized tank specification as specified in part 173, subpart F of this subchapter. Finally, Paragraph (a)(5) requires owners of Non-Jacketed DOT–111 tank cars in PG I service in an HHFT, who are unable to meet the January 1, 2017 retrofit deadline specified in § 173.243 (a)(1) to submit a report by March 1, 2017 to Department of Transportation. The report must include information regarding the retrofitting progress.

Section 179.200

The heading for § 179.200 is revised to include the DOT–117 specification.

Section 179.200–1

The heading for § 179.200–1 is revised by stating that tank cars built under the DOT–117 specification must meet the applicable requirements of §§ 179.200, 179.201, and 179.202.

Section 179.202–1

Section 179.202–1 prescribes the applicability of the DOT–117 tank car standards and specifies that each tank built under such specification must conform to the general requirements of § 179.200 and the prescriptive standards in §§ 179.202–1 through 179.202–11, or the performance standard requirements of § 179.202–12.

Section 179.202–3

Section 179.202–3 authorizes a DOT–117 tank car to be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). This section also provides a reference to § 179.13 which provides authorization for a gross weight on rail of up to 286,000 pounds (129,727 kg).

Section 179.202–4

Section 179.202–4 specifies that the wall thickness after forming of the tank shell and heads on a DOT–117 tank car must be, at a minimum, 9/16 of an inch of AAR TC–128 Grade B normalized steel. Although not proposed in the NPRM, in this final rule, we are also authorizing 5/8 of an inch of ASTM A 516–70 in accordance with § 179.200–7(b) that is currently allowed by the HMR. Both grades of steel must be normalized.

Section 179.202–5

Section 179.202–5 specifies that the DOT–117 specification tank car must have a tank head puncture resistance system constructed in conformance with the requirements in § 179.16(c). Additionally, the section specifies the tank car must be equipped with full height head shields with a minimum thickness of ½ inch.

Section 179.202–6

Section 179.202–6 specifies that the DOT–117 specification tank car must be equipped with a thermal protection system. The thermal protection system

must conform to the performance standard in § 179.18 and include a reclosing PRD in accordance with § 173.31 of this subchapter.

Section 179.202–7

Section 179.202–7 specifies that the thermal protection system on a DOT–117 specification tank car must be covered with a metal jacket of a thickness not less than 11 gauge A 1011 steel or equivalent and flashed around all openings to be weather tight. It also requires that a protective coating be applied to the exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket.

Section 179.202–8

Section 179.202–8 prescribes minimum standards for bottom outlet handle protection on a DOT–117 specification tank car. In this final rule, we are requiring that if the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

Section 179.202–9

Section 179.202–9 prescribes the top fittings protection standard for DOT–117 specification tank cars. In this final rule, we are adopting as proposed, to incorporate by reference in § 171.7, Appendix E 10.2.1 of the 2010 version of the AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars). Thus, a DOT–117 specification tank car must be equipped with top fittings protection in accordance with the incorporated standard.

Section 179.102–10

Section 179.102–10 prescribes ECP braking construction standards for DOT–117 specification tank cars. Specifically, paragraph (a) requires by January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements. In addition paragraph (b) requires by May 1, 2023, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, and not described in paragraph (a) of this section, must ensure the train meets the ECP braking capability requirements. Finally, paragraph (c) permits alternate brake systems to be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

Section 179.202–11

A table is provided in § 179.202–11 to indicate the individual specification requirements for a DOT–117 specification tank car.

Section 179.202–12

Section 179.202–12 provides an optional performance standard that a DOT–117 specification tank car may be manufactured to and is designated and marked as ''DOT–117P.'' Paragraph (a) describes the approval process for the design, testing, and modeling results that must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer of the FRA. Paragraph (b) describes the approval process to operate at 286,000 gross rail load (GRL). Paragraph (c) specifies that a DOT–117P specification tank car must be equipped with a tank-head puncture-resistance system in accordance with the performance standard in § 179.18. Paragraph (d) specifies that a DOT–117P specification tank car must be equipped with a thermal protection system. The thermal protection system must be designed in accordance with the performance standard in § 179.18 and include a reclosing PRD conforming to § 173.31 of this subchapter. Paragraph (e) specifies that if the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios. Paragraph (f) specifies that the tank car tank must be equipped with top fittings protection conforming to AAR Specifications Tank Cars, appendix E paragraph 10.2.1. Paragraph (g) prescribes ECP braking construction standards for DOT–117P specification tank cars. Specifically, paragraph (g)(1) requires by January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements. In addition paragraph (g)(2) requires by May 1, 2023 each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, not described in paragraph (g)(1) of this section must ensure the train meets the ECP braking capability requirements. Finally, paragraph (g)(3) permits alternate brake systems to be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

Section 179.202–13

Section 179.202–13 prescribes the retrofit standards for existing non-pressure tank cars. Non-pressure tank cars retrofitted to meet the standards prescribed in this section are designated and marked ''DOT–117R.'' Paragraph (a) prescribes the applicability of the DOT–117R tank car standards and specifies that each tank retrofitted under such specification must conform to the general requirements of § 179.200 and the retrofit standards in this section, or the performance standard requirements of § 179.202–12. Paragraph (b) authorizes a DOT–117 tank car to be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). Paragraph (c) requires that the original construction provided a wall thickness after forming of the tank shell and heads at a minimum of 7/16 of an inch, and constructed with steel authorized by the HMR at the time of construction. Paragraph (d) specifies that the DOT–117R specification tank car must have a tank head puncture resistance system constructed in conformance with § 179.16(c). Additionally, the section specifies the tank car must be equipped with full height head shields with a minimum thickness of ½ inch. Paragraph (e) specifies that the DOT–117R specification tank car must be equipped with a thermal protection system. The thermal protection system must conform to the performance standard in § 179.18 and include a reclosing PRD in accordance with § 173.31 of this subchapter. Paragraph (f) specifies that the DOT–117R specification tank car must be covered with a metal jacket of a thickness not less than 11 gauge A 1011 steel or equivalent and flashed around all openings to be weather tight. It also requires that a protective coating be applied to the exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket. Paragraph (g) prescribes minimum standards for bottom outlet handle protection on a DOT–117R specification tank car. In this final rule, we are requiring that if the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios. Paragraph (h) authorizes existing tank car tanks to rely on any top fittings protection installed at the time of original manufacture. Paragraph (i) prescribes ECP braking construction standards for DOT–117R

specification tank cars. Specifically, paragraph (i)(1) requires by January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements. In addition paragraph (i)(2) requires by May 1, 2023 each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, not described in paragraph (i)(1) of this section must ensure the train meets the ECP braking capability requirements. Finally, paragraph (i)(3) permits alternate brake systems to be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

IX. Impact of Adopted Regulation on Existing Emergency Orders

As previously mentioned Emergency Order authority is granted to the Department and permits the Department to take action on safety issues that constitute an imminent hazard to the safe transportation of hazardous materials. Railroad transportation of hazardous materials in commerce is subject to the authority and jurisdiction of the Secretary of Transportation (Secretary), including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard. 49 U.S.C. 5121(d). Therefore an emergency order can be issued if the Secretary has found that an unsafe condition or an unsafe practice is causing or otherwise constitutes an imminent hazard to the safe transportation of hazardous materials.

Currently the Department has four emergency orders in affect that are relevant to rail shipment of large quantities of flammable liquids. Below we will discuss those orders and how the amendments adopted in this rulemaking affect those Emergency Orders. Emergency Orders remain in effect until the Secretary determines that an imminent hazard no longer exits or a change in applicable statute or Federal regulation occurs that supersedes the requirements of the Order, in which case the Secretary will issue a Rescission Order.

Emergency Order 28

Emergency Order 28 was issued on August 7, 2013 and addressed safety issues related to securement of certain hazardous materials trains. Specifically, this order requires trains with (1) Five or more tank carloads of any one or any combination of materials poisonous by inhalation as defined in Title 49 CFR 171.8, and including anhydrous ammonia (UN1005) and ammonia solutions (UN3318); or (2) 20 rail carloads or intermodal portable tank loads of any one or any combination of materials listed in (1) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive,[101] or hazardous substance listed in 49 CFR 173.31(f)(2). To see the specific provisions of this emergency order see the August 7, 2013, **Federal Register** (78 FR 48218).[102]

While this final rulemaking does not address train securement, on August 9, 2014, FRA published an NPRM that proposed amendments to the brake system safety standards for freight and other non-passenger trains and equipment to strengthen the requirements relating to the securement of unattended equipment. Specifically, FRA proposed to codify many of the requirements already included in emergency order 28. FRA proposed to amend existing regulations to include additional securement requirements for unattended equipment, primarily for trains transporting poisonous by inhalation hazardous materials or large volumes of Division 2.1 (flammable gases), Class 3 (flammable or combustible liquids, including crude oil and ethanol), and Class 1.1 or 1.2 (explosives) hazardous materials. For these trains, FRA also proposed additional communication requirements relating to job briefings and securement verification. Finally, FRA proposed to require all locomotives left unattended outside of a yard to be equipped with an operative exterior locking mechanism. Attendance on trains would be required on equipment not capable of being secured in accordance with the proposed and existing requirements.

As this final rulemaking does not address train securement emergency order 28 remains currently unaffected. The upcoming final rule in response to comments from FRA's August 9, 2014 NPRM that proposed amendments to the brake system safety standards for freight and other non-passenger trains and equipment to strengthen the requirements relating to the securement of unattended equipment will address the status of emergency order 28 upon adoption.

[101] Should have read ''Division'' instead of ''Class.''

[102] See *http://www.gpo.gov/fdsys/pkg/FR-2013-08-07/pdf/2013-19215.pdf.*

DOT–OST–2014–0025

This emergency order was published on February 25, 2014. Subsequently a revised and amended emergency order was published on March 6, 2014. This emergency order required those who offer crude oil for transportation by rail to ensure that the product is properly tested and classified in accordance with Federal safety regulations. Further the EO required that all rail shipments of crude oil are properly classed as a flammable liquid in Packing Group (PG) III material be treated as a PG I or II material, until further notice. The Amended Emergency Order also authorized PG III materials to be described as PG III for the purposes of hazard communication.

The primary intent of this emergency order was to address unsafe practices related to the classification and packaging of petroleum crude oil. Misclassification is one of the most dangerous mistakes to be made when dealing with hazardous materials because proper classification is the critical first step in determining how to package, handle, communicate about, and safely transport hazardous materials. Misclassification may indicate larger problems with company management, oversight, and quality control. Petroleum crude oil may contain dissolved gases or other unanticipated hazardous constituents, may exhibit corrosive properties and also may exhibit toxic properties.

In this rulemaking we have adopted requirements for a testing and sampling program to ensure better classification and characterization of unrefined petroleum-based products. As part of this requirement the HMR now require an offeror to prepare a written sampling and testing program for unrefined petroleum-based products. This program must address: (1) A frequency of sampling and testing that accounts for any appreciable variability of the material (2) Sampling prior to the initial offering of the material for transportation and when changes that may affect the properties of the material occur; (3) Sampling methods that ensures a representative sample of the entire mixture, as offered, is collected; (4) Testing methods that enable classification of the material under the HMR; (5) Quality control measures for sample frequencies; (6) Duplicate samples or equivalent measures for quality assurance; (7) Criteria for modifying the sampling and testing program; (8) Testing or other appropriate methods used to identify properties of the mixture relevant to packaging requirements.

Furthermore the offeror is required to certify that program is in place, document the testing and sampling program, and make program information available to DOT personnel, upon request. The primary intent of this requirement is of address unsafe practices related to the classification and packaging of mined products.

As the March 6, 2014 emergency order and the requirements adopted in this rulemaking related to classification and characterization address the same safety issue the March 6, 2014 emergency order is no longer necessary. Therefore the requirements adopted in this rule supersede the March 6, 2014 emergency order and make it no longer necessary once the rule becomes effective.

DOT–OST–2014–0067

This emergency order was published on May 7, 2014. This emergency order required all railroads that operate trains containing one million gallons of Bakken crude oil to notify SERCs about the operation of these trains through their States. Specifically, this notification should identify each county, or a particular state or commonwealth's equivalent jurisdiction (*e.g.,* Louisiana parishes, Alaska boroughs, Virginia independent cities), in the state through which the trains will operate.

The primary intent of this emergency order was to eliminate unsafe conditions and practices that create an imminent hazard to public health and safety and the environment. Specifically, this emergency order was designed to inform communities of large volumes of crude oil transported by rail through their areas and to provide information to better prepare emergency responders for accidents involving large volumes of crude oil.

In this rulemaking we have adopted notification requirements for large volumes of crude oil transported by rail. These requirements were designed to codify the requirements of the May 7, 2014 EO. While some amendments to the original proposal are made, the requirements adopted in this rulemaking align with the intent of the May 7, 2014 emergency order.

As the May 7, 2014 emergency order and the requirements adopted in this rulemaking related to notification address the same safety issue, the May 7, 2014 emergency order is no longer necessary. Therefore the requirements adopted in this rule supersede the May 7, 2014 emergency order and make it no longer necessary once the information sharing portion of the routing requirements come into full force. Therefore this emergency order will remain in effect until March 31, 2016.

FRA Emergency Order No. 30

FRA Emergency Order No. 30 (''Emergency Order 30'' or ''order'') was issued on April 27, 2015 and mandated that trains affected by this order not exceed 40 miles per hour (mph) in high-threat urban areas (HTUAs) as defined in 49 CFR part 1580. Under the order, an affected train is one that contains: 1) 20 or more loaded tank cars in a continuous block, or 35 or more loaded tank cars, of Class 3 flammable liquid; and, 2) at least one DOT Specification 111 (DOT–111) tank car (including those built in accordance with Association of American Railroads (AAR) Casualty Prevention Circular 1232 (CPC–1232)) loaded with a Class 3 flammable liquid. FRA determined at that time that public safety compelled the issuance of Emergency Order 30 due to the recent railroad accidents involving trains transporting petroleum crude oil and ethanol and the increasing reliance on railroads to transport voluminous amounts of these flammable liquids in recent years. For more information regarding this order, see the April 27, 2015, publication in the **Federal Register** (80 FR 23321).

The final rule will implement speed restrictions for HHFTs, including a maximum operating speed of 40 mph for HHFTs in HTUAs, with an effective date of July 7, 2015. As such, the final rule affects the same population of tank cars as defined above and codifies the same speed restriction that was implemented through Emergency Order 30. Thus, the final rule replaces Emergency Order 30 upon the effective date of the final rule.

X. Regulatory Review and Notices

A. Executive Order 12866, Executive Order 13563, Executive Order 13610 and DOT Regulatory Policies and Procedures

This final rule is considered an economically significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB), because it has an expected annual impact of more than $100 million. The final rule is considered a significant regulatory action under the Regulatory Policies and Procedures order issued by the Department of Transportation (DOT) (44 FR 11034, February 26, 1979). PHMSA prepared a Regulatory Impact Analysis addressing the economic impact of this final rule, and placed it in the docket for this rulemaking.

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. DOT believes that streamlined and clear regulations are important to ensure compliance with important safety regulations. As such DOT has developed a plan detailing how such reviews are conducted.[103]

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, PHMSA invited public comment twice (the September 6, 2013, ANPRM and August 1, 2014, NPRM) on these considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments aided PHMSA and FRA in the evaluation of the proposed requirements. PHMSA and FRA have since revised our evaluation and analysis to address the public comments received.

Flammable liquids include a wide variety of chemical products. In accordance with this action, Class 3 (Flammable liquids) are subject to the provisions contained in this final rule when shipped in a HHFT. Class 3 (Combustible liquids) are not subject to the provisions of the final rule (*e.g.,* diesel fuel). Some materials like crude oil display a wide range of flash points and as such may not be subject to the provisions in all cases. In other cases, a flammable liquid may be mixed with a non-hazardous material to the point that the flash point is within the range of a Combustible liquid and would not be subject to the provisions of this final rule (*e.g.,* dilute solutions of alcohol). Approximately 68% of the flammable liquids transported by rail are comprised of crude oil, ethanol, and petrochemical or petroleum refinery products. Further, ethanol and crude oil

[103] Department of Transportation's plan for retrospective regulatory reviews is available: *http://www.dot.gov/regulations/dot-retrospective-reviews-rules.*

comprise approximately 65% of the flammable liquids transported by rail.

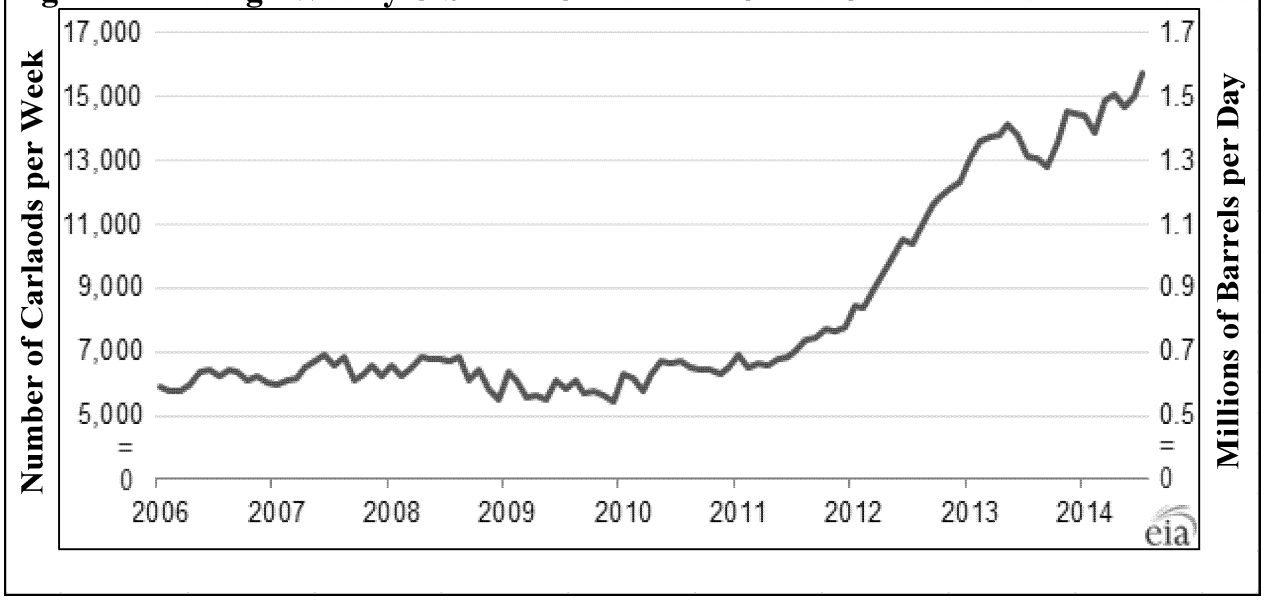
Crude Oil Transport by Rail

The U.S. is now the global leader in crude oil production growth. With a growing domestic supply, rail transportation, in particular, has emerged as a flexible alternative to transportation by pipeline or vessel. The volume of crude oil carried by rail increased 423 percent between 2011 and 2012.[104] [105] In 2013, as the number of rail carloads of crude oil surpassed 400,000.[106]

The Bakken region of the Williston basin is now producing over one million barrels of oil per day [107], most of which is transported by rail. The U.S. Energy Information Administration's *''Annual Survey of Domestic Oil and Gas Reserves''* reports that in addition to North Dakota's Bakken region, the shale plays in reserves in North America are extensive.[108]

Expansion in oil production has led to increasing volumes of product transported to refineries. Traditionally, pipelines and oceangoing tankers have delivered the vast majority of crude oil to U.S. refineries, accounting for approximately 93 percent of total receipts (in barrels) in 2012. Although other modes of transportation—rail, barge, and truck—have accounted for a relatively minor portion of crude oil shipments, volumes have been rising very rapidly. With a growing domestic supply, rail transportation, in particular, has emerged as a flexible alternative to transportation by pipeline or vessel. The transportation of large volumes of flammable liquids by poses a risk to life, property, and the environment. The volume of flammable liquids shipped by rail unit trains has been increasing rapidly since 2006, representing a growing risk. Figure 1 (restated here) provides the Average weekly U.S. rail carloads of crude oil and petroleum products from 2006 through 2014. The figure below visually demonstrates the considerable increase in crude oil and petroleum shipments by rail.[109]

Figure 1: Average Weekly U.S. Rail Carloads of Crude Oil and Petroleum Products



[104] See U.S. Rail Transportation of Crude Oil: Background and Issues for Congress; *http://fas.org/sgp/crs/misc/R43390.pdf.*

[105] *See Table 9 of EIA refinery report http://www.eia.gov/petroleum/refinerycapacity/.*

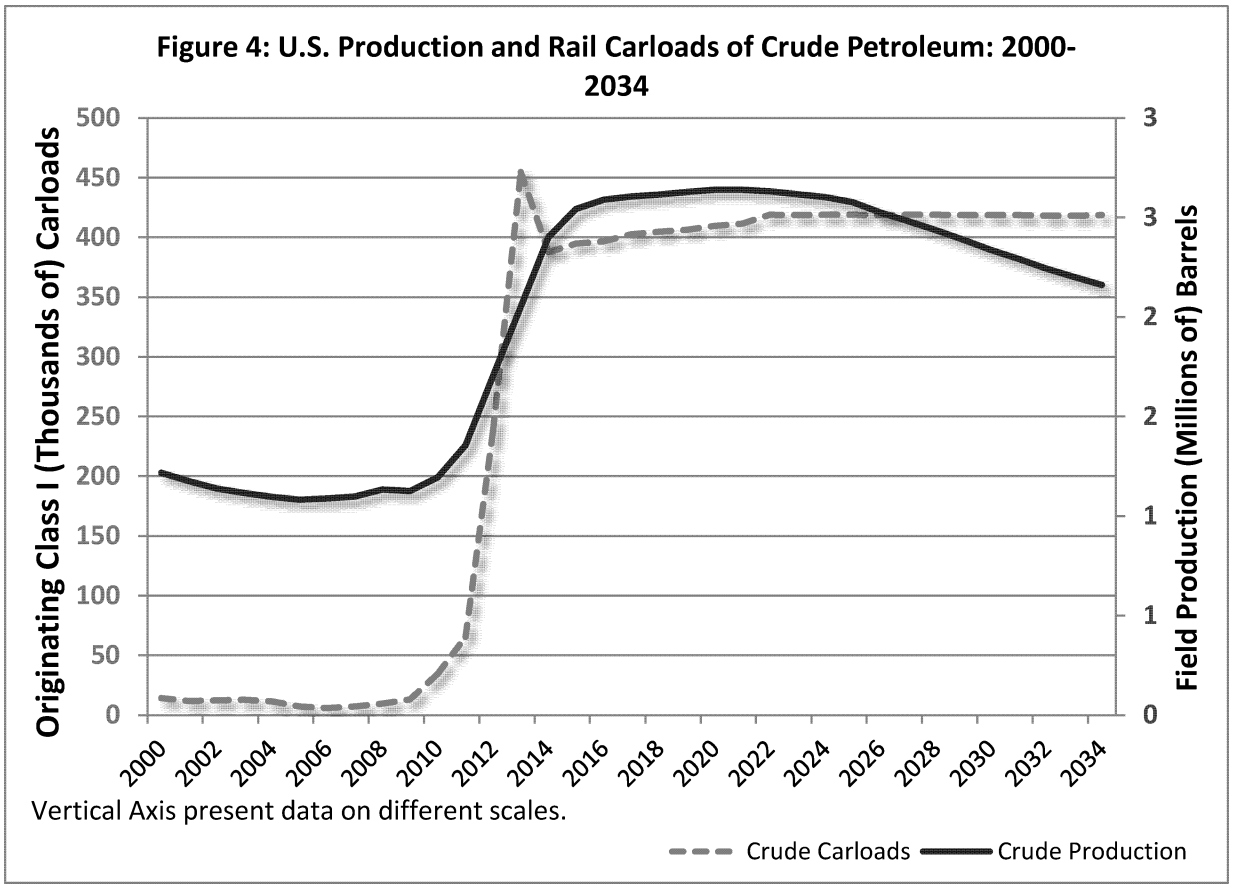
[106] *http://www.stb.dot.gov/stb/industry/econ_waybill.html.*

[107] Information regarding oil and gas production is available at the following URL: *http://www.eia.gov/petroleum/drilling/#tabs-summary-2.*

[108] EIA ''U.S. Crude Oil and Natural Gas Proved Reserves, 2013,'' available at: *http://www.eia.gov/naturalgas/crudeoilreserves/pdf/uscrudeoil.pdf.*

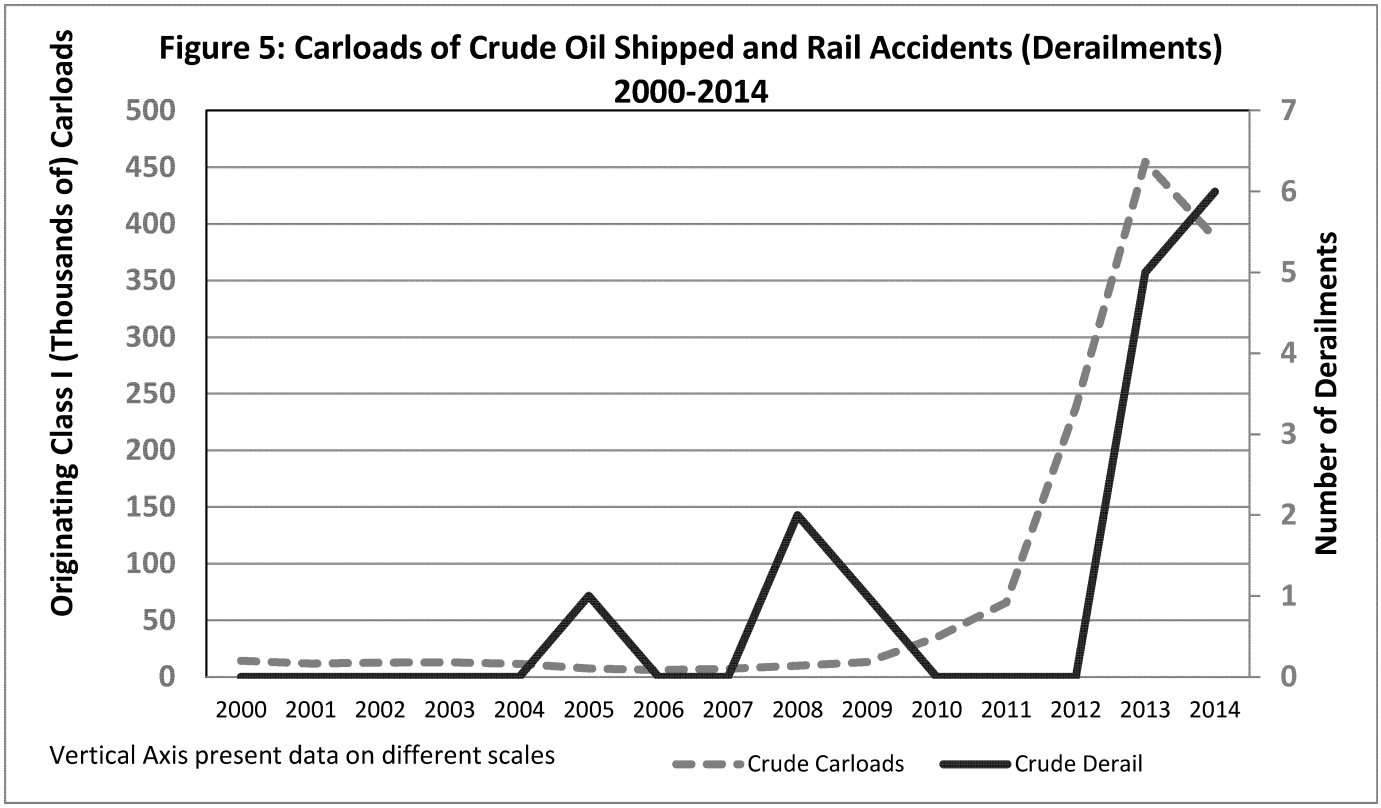
[109] U.S. Energy Information Administration, *Rail deliveries of U.S. oil continue to increase in 2014,* (August 28, 2014) available at *http://www.eia.gov/todayinenergy/detail.cfm?id=17751.*

Figure 4 shows the recent strong growth in crude oil production in the U.S., as well as growth in the number of rail carloads shipped. Figure 4 also shows forecasted domestic crude oil production from the Energy Information Administration (EIA) and PHMSA's projected strong demand for the rail shipment of crude oil.



SOURCES AND NOTES: Originating Carloads for 2000–2013 obtained from the Surface Transportation Board waybill sample. Forecasts of overall domestic crude oil production and carload figures from 2014–2034 are taken from the report prepared by the Brattle Group on behalf of RSI [Table 14]. Production figures were derived from the EIA domestic crude production from 2014 Annual Energy Outlook then converted to carloads.

Rail accidents involving crude oil have risen along with the increase in crude oil production and rail shipments of crude oil. Figure 5 shows this rise.



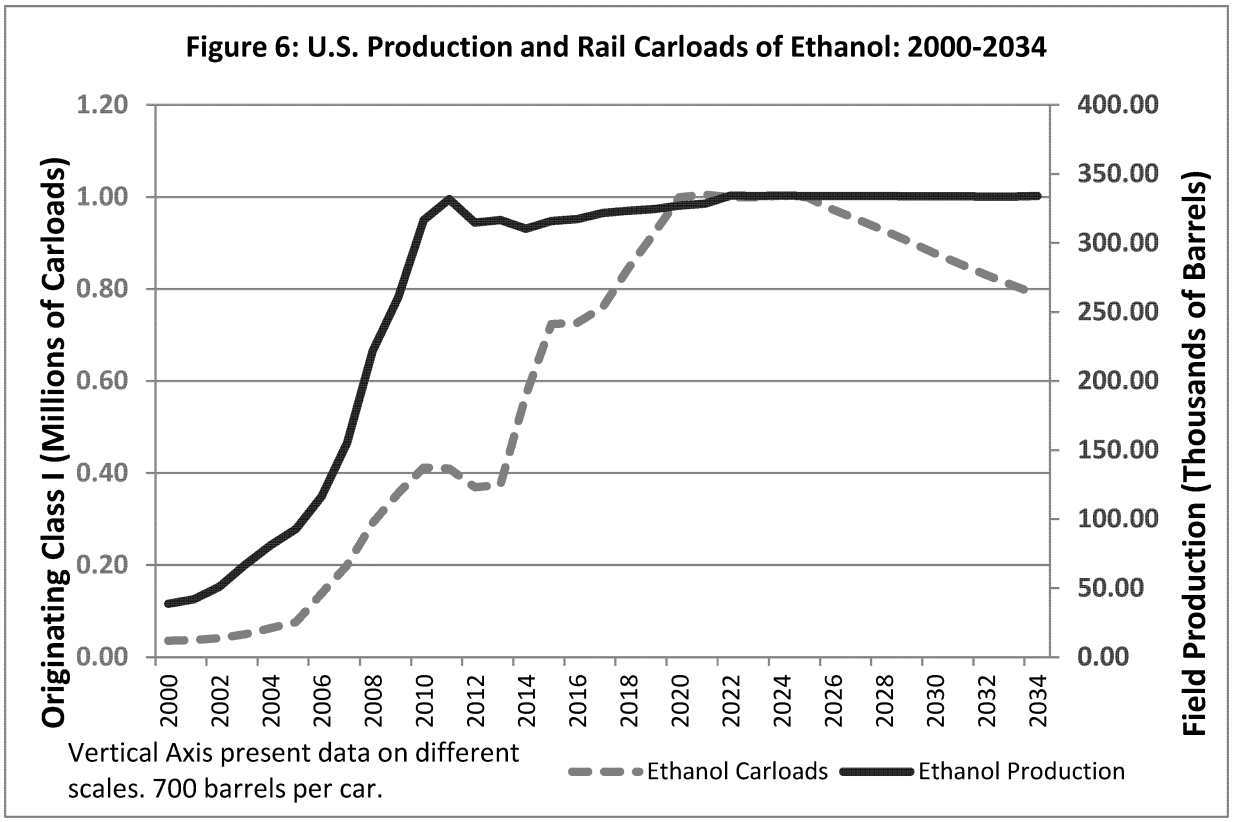
SOURCES AND NOTES: Originating Carloads for 2000–2013 obtained from the Surface Transportation Board waybill sample 2014 originating carloads is an estimate based on EIA production forecast. Incident counts are from the PHMSA and FRA Incident Report Databases.

Based on these train accidents, the projected continued growth of domestic crude oil production, and the growing number of train accidents involving crude oil, PHMSA concludes that the potential for a train accident involving crude oil has increased, which has raised the likelihood of a catastrophic train accident that would cause substantial damage to life, property, and the environment.

Ethanol Transport by Rail

In the last ten years, the production of ethanol has increased dramatically due to the demand for ethanol-blend fuels. U.S. production of ethanol was 14.3 billion gallons in 2014.[110] Ethanol is largely shipped from production facilities by rail and is now the largest volume hazardous material shipped by rail. Large volumes of ethanol are commonly shipped by unit trains, up to 3.2 million gallons, and the larger barges can transport up to 2.5 million gallons.

Ethanol is a flammable colorless liquid; a polar solvent that is completely miscible in water. It is heavier than air, and has a wider flammable range than gasoline, with a Lower Explosive Limit (LEL) to an Upper Explosive Limit (UEL) range of 3.3% to 19%. The flash point for pure ethanol is 55 °F, and for denatured ethanol it can be much lower depending on the amount of denaturant used. Ethanol is still considered a flammable liquid in solutions as dilute as 20%, with a flash point of 97 °F. At colder temperatures (below about 51 °F), the vapor pressure of ethanol is outside the flammable range. Ethanol is shipped with a flammable liquids placard and North American 1987 designation.[111] As shown in the Figure 6, EIA projects strong demand for ethanol in the future.

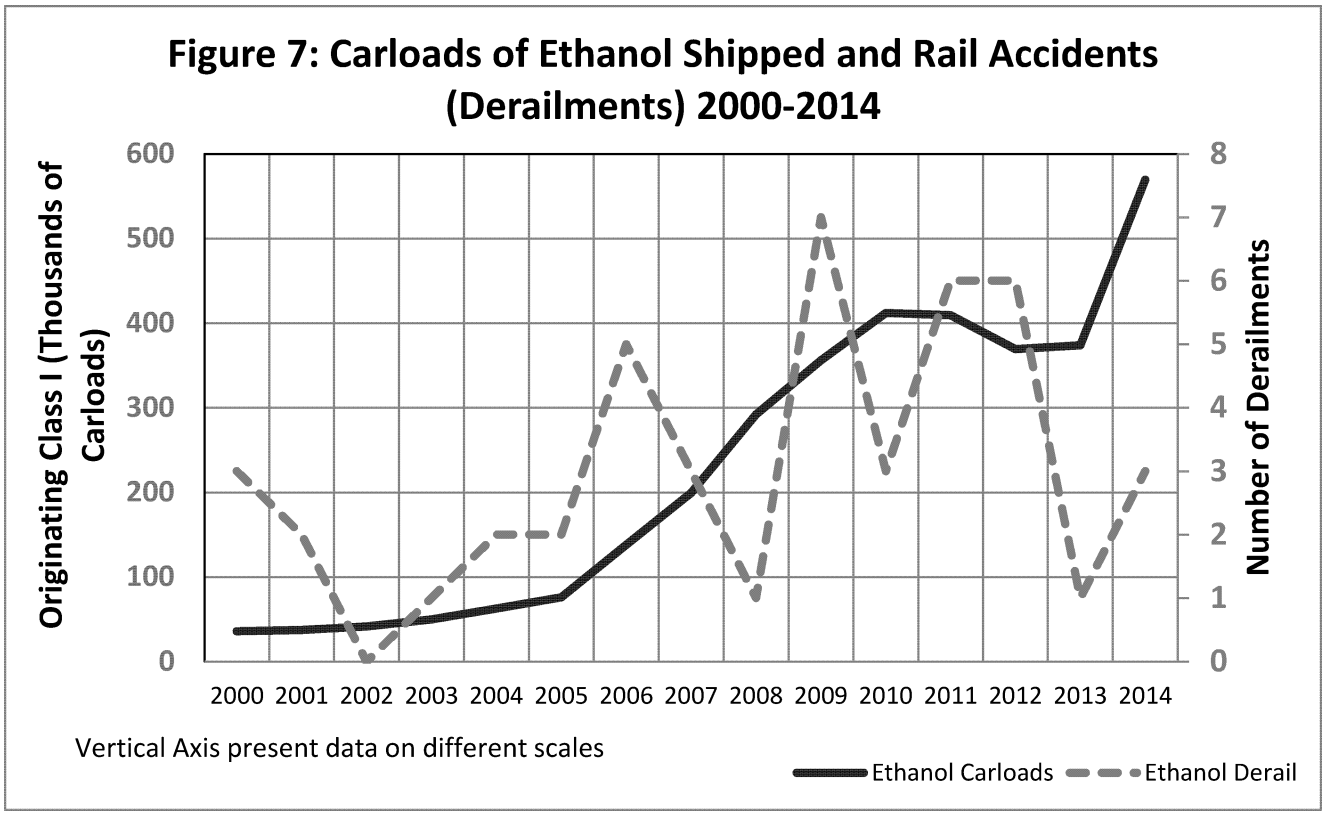


SOURCES AND NOTES: Originating Carloads for 2000–2013 were obtained from the Surface Transportation Board Waybill sample. Forecasts of overall domestic ethanol production are obtained from the EIA. The carload forecast from 2014–2034 is based on production using Excel's Forecast function using an estimated linear trend of historic ethanol carloads based on historic production.

According to a June 2012 white paper by the AAR, U.S. ethanol production has increased considerably during the last 10 years and has generated similar growth in the transportation of ethanol by rail. Between 2001 and 2012, the number of rail carloads of ethanol increased by 650 percent. Similarly the number of rail carloads of crude oil has also exponentially increased. Unfortunately, this growth in rail traffic has been accompanied by an increase in the number of rail accidents involving ethanol and crude oil. Figure 7 below plots the total number of rail accidents involving ethanol during the last 13 years compared to the total carloads of ethanol. The left axis shows the total number of rail derailments and the right axis shows total carloads shipped.

[110] Source: U.S. Energy Information Administration : ''January 2015 Monthly Energy Review. U.S. Energy Information Administration ''January 2015 Monthly Energy Review'' Annual Data: *www.eia.gov/totalenergy/data/browser/xls.cfm?tbl=T10.03&freq=m.*

[111] Large Volume Ethanol Spills—Environmental Impacts and Response Options, MassDEP, *http://www.mass.gov/eopss/docs/dfs/emergencyresponse/special-ops/ethanol-spill-impacts-and-response-7-11.pdf.*



SOURCES AND NOTES: Originating Carloads for 2000–2013 obtained from the Surface Transportation Board waybill sample 2014 originating carloads is an estimate based on EIA production forecast. Incident counts are from the PHMSA and FRA Incident Report Databases.

Summary of Regulatory Changes

In the final RIA PHMSA and FRA analyzed the impacts associated with a system-wide, comprehensive final rule that addresses the risk associated with the transportation of flammable liquids in HHFTs. Final rule provisions include:

- Routing Requirements
- Tank Car Specifications;
- Speed Restrictions;
- Advanced Brake Signal Propagation Systems; and
- Classification of Unrefined Petroleum-based Products.

This approach is designed to mitigate damages of rail accidents involving flammable materials, though some provisions could also prevent accidents. The RIA discusses, consistent with this final rule, five requirement areas. Although we analyze the effects of individual requirements separately, this final rule is a system-wide approach covering all requirement areas.

PHMSA received over 3,200 public comments representing over 182,000 signatories in response to the August 1, 2014 NPRM and initial RIA. This final rule has been revised in response to the comments received and the final RIA has been revised to align with the changes made to the final rule. Specifically, the RIA explains adjustments to the methodology used to estimate the benefits and costs resulting from the final rule.

The analysis shows that expected damages based on the historical safety record are expected to exceed $4.1 billion (undiscounted) and that damages from high-consequence events could reach $12.6 billion (undiscounted) over a 20-year period in the absence of the rule.

The revised RIA is in the docket and supports the amendments made in this final rule. Table 4 (restated here) shows the costs and benefits by affected section and rule provision over a 20-year period, discounted at a 7% rate. Table 4 (restated here) also shows an explanation of the comprehensive benefits and costs (*i.e.,* the combined effects of individual provisions), and the estimated benefits, costs, and net benefits of each amendment.

Please also note that, given the uncertainty associated with the risks of HHFT shipments, Table 4 (restated here) contains a range of benefits estimates. The low-end of the range of estimated benefits estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol from 2006 to 2013, adjusting for the projected increase in shipment volume over the next 20 years. The upper end of the range of estimated benefits is the 95th percentile from a Monte Carlo simulation.

TABLE 4—20 YEAR COSTS AND BENEFITS BY STAND-ALONE REGULATORY AMENDMENTS 2015–2034 [112]

Affected section [113]	Provision	Benefits (7%)	Costs (7%)
49 CFR 172.820	Rail Routing +	Cost effective if routing were to reduce risk of an incident by 0.41%.	$8.8 million.
49 CFR 173.41	Classification Plan	Cost effective if this requirement reduces risk by 1.29%.	$18.9 million.

TABLE 4—20 YEAR COSTS AND BENEFITS BY STAND-ALONE REGULATORY AMENDMENTS 2015–2034 [112]—Continued

Affected section [113]	Provision	Benefits (7%)	Costs (7%)
49 CFR 174.310	Speed Restriction: 40 mph speed limit in HTUA*.	$56 million–$242 million**	$180 million.
	Advanced Brake Signal Propagation Systems.	$470.3 million–$1,114 million**	$492 million.
49 CFR part 179	Existing Tank Car Retrofit/ Retirement.	$426 million—$1,706 million**	$1,747 million.
	New Car Construction	$23.9 million–$97.4 million**	$34.8 million.
Cumulative Total		$912 million–$2,905 million**	$2,482 million.

"*" indicates voluntary compliance regarding crude oil trains in high-threat urban areas (HTUA).
"+" indicates voluntary actions that will be taken by shippers and railroads.
"**" Indicates that the low end of the benefits range is based solely on lower consequence events, while the high end of the range includes benefits from mitigating high consequence events.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531) (UMRA) requires each agency to prepare a written statement for any proposed or final rule that includes a ''Federal mandate that may result in the expenditure by State, local, and Native American Indian tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The value equivalent of $100 million in 1995, adjusted for inflation to 2012 levels, is $151 million. This final rule will not impose enforceable duties on State, local, or Native American Indian tribal governments. UMRA was designed to ensure that Congress and Executive Branch agencies consider the impact of legislation and regulations on States, local governments, and tribal governments, and the private sector. With respect to States and localities, UMRA was an important step in recognizing State and local governments as partners in our intergovernmental system, rather than mere entities to be regulated or extensions of the Federal government.

As described in greater detail throughout this document, the final rule is a system-wide, comprehensive approach consistent with the risks posed by high-hazard flammable materials transported by rail. Specifically, requirements address: (1) Proper classification and characterization, (2) operational controls to lessen the likelihood and consequences of train accidents and (3) tank car integrity. The RIA discusses, consistent with this final rule, five requirement areas: Rail Routing, Enhanced Tank Car Standards, Speed Restrictions, Braking, and Classification of unrefined petroleum-based products.

The final rule would result in costs to the private sector that exceed $151 million in any one year and those costs and benefits associated with this rulemaking have been discussed under paragraph A, Executive Order 12866, Executive Order 13563, Executive Order 13610 and DOT Regulatory Policies and Procedures, of this section. In addition, the RIA provides a detailed analysis of the public sector costs associated with the proposed requirements. The RIA is available in the public docket for this rulemaking. PHMSA invites comments on these considerations, including any unfunded mandates related to this rulemaking.

C. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have ''substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Orders 13132 (''Federalism''). The amendments in the final rule will not have any direct effect on the states, or their political subdivisions; it will not impose any compliance costs; and it will not affect the relationships between the national government and the states, or political subdivisions, or the distribution of power and responsibilities among the various levels of government.

Several of the issues addressed in this final rule are subject to our preemption authority, *i.e.,* classification, packaging, and rail routing. In regard to rail routing, for example, in a March 25, 2003 final rule (68 FR 14509), we concluded that the specifics of routing rail shipments of hazardous materials preempts all states, their political subdivisions, and Indian tribes from prescribing or restricting routes for rail shipments of hazardous materials, under Federal hazardous material transportation law (49 U.S.C. 5125) and the Federal Rail Safety Act (49 U.S.C. 20106). We would expect the same preemptive effect as a result of this rulemaking, and thus, the consultation and funding requirements of Executive Orders 13132 and 13175 do not apply. Nonetheless, we invited state and local governments with an interest in this rulemaking to comment on any effect that proposed requirements could have on them, if adopted.

We received comments from state and local governments representing approximately 200 signatories. State and local governments unanimously supported the goal of this rulemaking to enhance safety of rail transportation for flammable liquids. Many local and state governments acknowledged the preemption authority of the federal government. Local and state governments also provided comments on specific proposals in the NPRM, which are discussed in the ''Summary and Discussion of Comments'' portion of this rulemaking. Therefore, the amendments in the final rule will not have any direct effect on the states, or their political subdivisions; it will not impose any compliance costs; and it will not affect the relationships between the national government and the states, or political subdivisions, or the distribution of power and responsibilities among the various levels of government.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order (E.O.) 13175 (''Consultation and Coordination with Indian Tribal Governments'') requires

[112] All costs and benefits are in millions over 20 years, and are discounted to present value using a seven percent rate and rounded.

[113] All affected sections of the Code of Federal Regulations (CFR) are in Title 49.

agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities. In complying with this E.O., agencies must determine whether a proposed rulemaking has tribal implications, which include any rulemaking that imposes ''substantial direct effects'' on one or more Indian communities, on the relationship between the federal government and Indian tribes, or on the distribution of power between the Federal Government and Indian tribes. Further, to the extent practicable and permitted by law, agencies cannot promulgate two types of rules unless they meet certain conditions. The two types of rules are: (1) Rules with tribal implications, substantial direct compliance costs on Indian tribal governments that are not required by statute; and (2) rules with tribal implications that preempt tribal law.

PHMSA analyzed this final rule in accordance with the principles and criteria prescribed in E.O. 13175. As a result, PHMSA has determined that this rulemaking does not significantly or uniquely affect tribes, and does not impose substantial direct effects or compliance costs on such governments. Moreover, under Federal hazardous material transportation law (49 U.S.C. 5125) and the Federal Rail Safety Act (49 U.S.C. 20106), the federal government has a superseding preemption with regard to hazardous materials regulation and railroad safety. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

We received approximately 6 comments from tribal governments addressing the NPRM. All the comments from Indian tribal governments addressed concerns about the environmental, economic, and safety impacts of crude oil train derailments in tribal lands. In general, comments from Indian tribal governments provided support for specific proposals in the NPRM or suggested stricter measures than proposed. For example, multiple tribal governments supported the 40-mph speed limit in all areas or recommended that speed restrictions be slower than proposed. Some comments submitted by Indian tribal governments provided recommendations that were beyond the scope of this rulemaking.

In the August 1, 2014 NPRM preceding this rulemaking, PHMSA asked for comment on the possible impacts of the notification requirements on Tribal Emergency Response Commissions (TERCs) or other tribal institutions. Overall, Indian tribal governments supported enhanced notification requirements on the basis that tribal governments or local communities have the right-to-know about hazardous materials shipments within their jurisdictions. We also received several comments from environmental groups and individuals that supported notification to TERCS or other tribal authorities. However, as stated in the ''Summary and Discussion of Comments'' PHMSA believes adopting the notification (and information sharing) requirements under § 172.820 for HHFTs constitutes a better approach than adopting the notification requirements proposed in the NPRM. Section 172.820 requires notification to Fusion Centers, which includes an existing mechanism for Tribal Nations to interact with the Fusion Centers through the State, Local, Tribal and Territorial Government Coordinating Council. Please refer to the aforementioned ''Summary and Discussion of Comments'' section for additional summary and discussion related to the notification issue.

Based upon on the discussion of comments throughout this rule, including those of Indian Tribal Governments, and the corresponding analysis of those comments, PHMSA and FRA are confident we have been responsive to the concerns of all our stakeholders including Indian Tribal Governments. As previously stated, we expect that several issues addressed in this final rule are subject to federal preemption authority, *i.e.,* classification, packaging, and rail routing. Furthermore, this rulemaking does not significantly or uniquely affect Indian tribal governments, and it does not impose substantial direct effects or compliance costs on such governments.

Other NPRM proposals that were discussed within the comments submitted by Indian tribal governments do not uniquely affect Indian tribal governments and were addressed by a wide variety of commenters. PHMSA has discussed these proposals in the appropriate comment summaries found in other sections of this rulemaking.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a 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. During the Notice of Proposed Rulemaking (NPRM) stage, PHMSA and FRA had not determined whether the proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, PHMSA published an IRFA to aid the public in commenting on the potential small business impacts of the proposals in the NPRM. All interested parties were invited to submit data and information regarding the potential economic impact that would result from adoption of the proposals in the NPRM.

The Regulatory Flexibility Act also requires an agency to conduct a final regulatory flexibility assessment (FRFA) unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. PHMSA is not able to certify that the final rule will not have a significant economic impact on a substantial number of small entities. PHMSA and FRA received comments and data from several commenters on the IRFA, and that information was used to make this determination. Therefore, PHMSA is publishing this FRFA that discusses the requirement areas of this final rule and provides the rationale the agencies used for assessing what impacts will be borne by small entities. PHMSA considered comments received in the public comment process when making a determination in the FRFA.

This FRFA was developed in accordance with the Regulatory Flexibility Act.

(1) A succinct statement of the need for and objectives of the rule.

PHMSA and FRA are promulgating the final rule in response to recent train accidents involving the derailment of HHFTs. Shipments of large volumes of flammable liquids pose a significant risk to life, property, and the environment. For example, on December 30, 2013, a train carrying crude oil derailed and ignited near Casselton, North Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 8, 2013, a train carrying crude oil to the Gulf Coast from North Dakota derailed in Alabama, spilling crude oil in a nearby wetland and igniting into flames. On July 6, 2013, a catastrophic railroad accident occurred in Lac-Mégantic, Quebec, Canada when an unattended freight train containing hazardous materials rolled down a descending grade and subsequently derailed. The derailment resulted in a fire and multiple energetic ruptures of tank cars, which, along with other effects of the accident, caused the confirmed death of 47 people. In addition, this derailment

caused extensive damage to the town center, clean-up costs, and the evacuation of approximately 2,000 people from the surrounding area. Although this regulatory action would not prevent such accidents involving unattended trains, the Lac-Mégantic incident demonstrates that very large economic losses occur with catastrophic derailments. PHMSA is taking this regulatory action to minimize the risks the damages of catastrophic accidents in the United States.

In this final rule, PHMSA and FRA are adopting revisions to the HMR to ensure that the rail requirements address the risks posed by the transportation on railroads of HHFTs. This rulemaking addresses risks in three areas: (1) Proper classification and characterization of the product being transported, (2) operational controls to decrease the likelihood and consequences of train accidents, and (3) tank car integrity to decrease the consequences of train accidents. Promulgating this rulemaking in these areas is consistent with the goals of the HMR: (1) To ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) to provide effective communication to transportation workers and emergency responders of the hazardous materials being transferred; and (3) to minimize the consequences of an incident should one occur.

(2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments.

For an extensive review of the comments raised please see the preamble discussion for this rule. The only issue raised in direct response to the IRFA itself was the number of entities that would be affected. Bridger, LLC expressed the concern that the use of ''offerors'' and ''railroads'' excluded entities such as bulk terminals. The following section provides a detailed estimate of the number of entities affected. Commenters also questioned the number of small railroads that would be affected. ASLRRA commented that 160 small railroads would be affected, not 64 as estimated in the IRFA. To the extent those railroads would be affected, as discussed below, the only impact would be the cost of conducting the required routing analysis and some rerouting.

(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.

The universe of the entities considered in an FRFA generally includes only those small entities that can reasonably expect to be directly regulated by the regulatory action. Small railroads and offerors are the types of small entities potentially affected by this final rule.

A ''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. Title 49 U.S.C. 601(4) likewise includes within the definition of small entities non-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 ''for-profit'' railroad business firm 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 offerors 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 as 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. This definition is what PHMSA is using for the rulemaking.

Railroads

Not all small railroads would be required to comply with the provisions of this rule. Most of the approximately 738 small railroads that operate in the United States do not transport hazardous materials. Based on comments from ASLRRA, the rule could potentially affect 160 small railroads because they transport flammable liquids in HHFTs. Therefore, this final rule would impact 22 percent of the universe of 738 small railroads.

Offerors

Almost all hazardous materials tank cars, including those cars that transport crude oil, ethanol, and other flammable liquids, are owned or leased by offerors. The adopted requirements for a testing and sampling program will directly affect shippers as they will now be required to create a document with a sampling and testing program for unrefined petroleum-based products. In addition, some of the other provisions in this rulemaking may indirectly affect offerors. DOT believes that a majority, if not all, of these offerors are large entities. DOT used data from the DOT/PHMSA Hazardous Materials Information System (HMIS) database to screen for offerors that may be small entities.

In analyzing the NPRM, from the DOT/PHMSA HMIS database and from industry sources, DOT found 731 small offerors that might be impacted. Based on further information available on the companies' Web sites, all other offerors appeared to be subsidiaries of large businesses. Also, in analyzing the NPRM, PHMSA found that out of these 731, only 297 owned tank cars that would be affected. All the other 434 offerors either did not own tank cars or have tank cars that would not be affected by the final rule. Additionally, no small offerors commented on PHMSA's ANPRM or NPRM for this proceeding. In both the ANPRM and the NPRM, PHMSA invited commenters to bring forth information that might assist it in assessing the number of small offerors that may be economically impacted by the requirement set forth in the proposed rule for development of the FRFA, but received no comments.

In reviewing SBA guidance for compliance with the Regulatory Flexibility Act, PHMSA determined that the appropriate standard for determining whether a small entity is impacted by the final rule is not whether the entity owns an affected tank car, but whether the entity is required to provide a tank car that conforms to the final rule when it loads the product. No entity, other the shipper loading the product, is required to provide a tank car that conforms to the final rule. Thus an entity leasing a tank car to load it is impacted as much as an entity owning a tank car to load it.

In addition, offerors of unrefined petroleum-based products may be subject to the newly adopted sampling and testing plan for all modes of transportation. The DOT/PHMSA HMIS database lists 1,568 entities described using NAICS 424710 for ''Petroleum Bulk Stations and Terminals.'' Of these, 1,444, or 92.09 percent are small entities. In addition, offerors of unrefined petroleum-based products may also include additional entities. The DOT/PHMSA HMIS database lists 186 entities described using NAICS 211111 for ''Crude Petroleum and Natural Gas Extraction.'' Of these, 122 are small entities. The DOT/PHMSA HMIS database lists 58 entities described using NAICS 211112 for ''Natural Gas Liquid Extraction.'' Of these, 34 are small entities. It is impossible to tell from the database if an entity has been recorded multiple times because of a name change or other corporate reorganization, such as a merger or acquisition. Likewise, entities that have ceased business may remain on the list. The important number is the percentage of entities, as both small entities and large entities may either have multiple listings or have ceased business. For purposes of this analysis, PHMSA assumes that half of the 1,444 small entities recorded in the database, or 722 small entities, are actually in business and affected by the final rule. In the analysis below, assuming a smaller number of entities results in a larger impact per entity, and is therefore more conservative.

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the 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.

For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this rulemaking.

This rulemaking has requirements in three areas that address the potential risks: (1) Proper classification and characterization of the product being transported, (2) operational controls to decrease the likelihood of accidents, and (3) tank car integrity. Requirements for braking, speed restrictions, and tank car production would not impact any small entities. Most small railroads affected by this rule do not operate at speeds higher than those imposed for speed restrictions or travel long distances over which the reduced speed would cause a significant economic impact. Any small railroad that operates at speeds 30 mph or less would also not be impacted by the braking requirement. Additionally, in a February 12, 2014, letter to the Secretary, ASLRRA announced that it recommended to its members to voluntarily operate unit trains of crude oil at a top speed of no more than 25 mph on all routes.

PHMSA and FRA believe that offerors may see modest increases in their lease rates as a result of enhanced tank car standards. PHMSA and FRA recognize that new tank car standards could potentially increase the rate charged to lessees since tank cars will cost more to construct and tank cars owners will seek similar returns on their investments. Given competition among suppliers of tank cars, the rates charged will be the prevailing market rate, and there will be a tendency for this rate to decrease as the supply of enhanced tank cars increases over time due to new manufacturing and effective retrofitting practices. To that effect, the implementation timeline has been specifically designed to incorporate industry data on the current manufacturing and retrofit capacity and to minimize short run supply impacts that may increase rates before the supply of enhanced tank cars expands.

Further, commenters have noted that lease rates have gone up in recent years. PHMSA and FRA believe, and commenters have confirmed, that the primary driver of recent increases in lease rates is due to the growth of the transport of crude oil by rail. In other words, increased demand for tank cars capable of carrying crude oil, relative to their supply, is responsible for most of the increase in lease rates. Once this regulation is promulgated and the industry has certainty on the new car standard for moving high volume flammable liquid shipments, we believe the industry will ramp up construction and lease rates will decrease. Additionally, also in the February 12th letter to the Secretary, the ASLRRA noted that it will support and encourage the development of new tank car standards including, but not limited to, adoption of a 9/16-inch tank car shell.

Section 174.310(a)(3) would expand hazardous materials route planning and selection requirements for railroads. This would include HHFTs transporting flammable materials and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas. Approximately 160 short line and regional railroads carry crude oil and ethanol in train consists large enough that they would potentially be affected by this rule. While PHMSA and FRA believe this number may be an overestimation of the number of affected small entities affected this figure was used in the FRFA as a conservative estimate.

The NPRM stated that the affected Class III railroads are already compliant with the routing requirements established by HM–232E (71 FR 76834), and there were no comments on this statement. In general, at the time that rule was promulgated, it was assumed that the small railroads impacted, due to their limited size, would, on average, have no more than two primary routes to analyze. Thus, the potential lack of an alternative route to consider would minimize the impact of this requirement. Because the distance covered by the small railroads' routes is likely contained within a limited geographic region, the hours estimated for analyses are fewer than those estimated for the larger railroads. Further, because the industry associations have developed simplified forms for the routing analysis for use by small railroads, and because small railroads usually have a very limited number of routing choices, the level of skill required to complete the routing analysis for a small railroad is much lower than would be required on a larger railroad.

Finally, this final rule will also require any offeror who offers a hazardous material for transportation to develop, implement, and update its sampling and testing programs related to classification and characterization of the hazardous material if it is an unrefined petroleum-based product. PHMSA believes that there would be an initial cost for each offeror of approximately $3,200 for the first year, and additional costs of $800 annually thereafter. PHMSA believes that this section would not significantly burden any of these small entities.

PHMSA estimates the total cost to each small railroad to be $8,715 in the first year and $3,637 for subsequent years, with costs growing with increases in real wages.[114] Based on small railroads' annual operating revenues, these costs are not significant. Small railroads' annual operating revenues range from $3 million to $20 million. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad is $47,000. Thus, the costs associated with this rule amount to

[114] Costs per railroad are derived in the RIA, with line costs for all Class III railroads divided by the 160 railroads affected. Those costs were $1,394,476 for Year 1, and $581,991 for Year 2. Values for subsequent years are increased for anticipated increases in real wages.

significantly less than one percent of the railroad's annual operating revenue. PHMSA realizes that some small railroads will have lower annual revenue than $4.7 million. However, PHMSA is confident that this estimate of total cost per small railroad provides a good representation of the cost applicable to small railroads, in general.

In conclusion, PHMSA believes that although some small railroads will be directly impacted, they will not be impacted significantly as the impact will amount to significantly less than one percent of an average small railroad's annual operating revenue. Information available indicates that none of the offerors will be significantly affected by the burdens of the rule. Therefore, these requirements will likely not have a significant economic impact on any small entities' operations. In the NPRM, PHMSA had sought information and comments from the industry that might assist in quantifying the number of small offerors who may be economically impacted by the requirements set forth in the proposed rule, but did not receive any comments.

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

PHMSA re-evaluated and re-defined ''High-Hazard Flammable Train'' to minimize the significant adverse economic impact on small entities. This definition served as the basis for many of the requirements in the NPRM and in this final rule. Be revising this definition we have narrowed the scope of the rulemaking to more appropriately focus on the risks of the transport of large volumes of flammable liquids by rail. This narrowing of the scope also limits the impact on small entities. We believe the new definition excludes the inclusion of manifest trains (which could represent a larger portion of smaller railroads) from the requirements of this rule.

Specifically, PHMSA and FRA revised the definition from ''20 or more tank cars in a train loaded with a flammable liquid'' to ''a continuous block of 20 or more tank cars or 35 or more cars dispersed through a train loaded with a flammable liquid'' based on public comment.

PHMSA and FRA did not intend the NPRM proposed definition to include lower risk manifest trains and had crafted the definition with the idea of capturing the higher risk bulk shipments seen in unit trains. Based on FRA modeling and analysis, 20 tank cars in a continuous block loaded with a flammable liquid and 35 tank cars or more total dispersed throughout a train loaded with a flammable liquid display consistent characteristics as to the number of tank cars likely to be breached in a derailment. See ''Definition of High-Hazard Flammable Train'' section of this rule for a description of the modeling. The operating railroads commented that this threshold will exclude lower risk manifest trains and focus on higher risk unit trains. It should be noted that commenters also suggested this threshold, as it would eliminate the inclusion of most manifest trains and focus on unit trains.

In addition to the above change that effects the entire rulemaking action, PHMSA is addressing six requirements areas in this final rule, and believes it is appropriate to address the impacts on small entities separately for each requirement area.

1. Requirement Area 1—Rail Routing

Adopted Action

PHMSA and FRA are requiring rail carriers develop and implement a plan that will result in the use of a safer and more secure route for certain trains transporting an HHFT. This may appear more burdensome than it will be, because FRA has helped to develop tools to facilitate analysis of routing, working with both the AAR and ASLRRA, ensuring that the tool will be readily available to small railroads. To assist railroads with evaluating primary and alternative routes for origin-destination pairs, the U.S. Department of Transportation awarded the Railroad Research Foundation (RRF), a non-profit affiliate of AAR, a Railroad Safety Technology Grant for a risk management tool that will help with the analysis of the 27 factors required in analyzing rail routing. The grant provided $1.54 million for enhancement and ongoing implementation of the Rail Corridor Risk Management System (RCRMS). RCRMS was developed for railroads with alternative routing and is therefore not effective for smaller or Class II/III railroads with limited route or no alternative routes. These railroads were responsible for developing their own analysis and documentation. Accordingly the Hazmat Transportation Analytical Risk Model (H–TRAM) model was developed as a result of an FRA Grant provided to RRF on behalf of ASLRRA. More recently, FRA funded an independent verification and validation of the model.

The rail routing requirements specified in § 172.820 are being modified to apply to any HHFT, as the term is defined in this final rule (§ 171.8; See discussion in HHFT section). Rail carriers would be required to assess available routes using, at a minimum, the 27 factors listed in Appendix D to Part 172 of the HMR to determine the safest, most secure routes for security-sensitive hazardous materials. Additionally, the requirements of § 172.820(g) require rail carriers to establish a point of contact with state and/or regional Fusion Centers who coordinate with state, local and tribal officials on security issues as well as state, local, and tribal officials that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.

To assist railroads with evaluating primary and alternative routes for origin-destination (OD) pairs, the U.S. Department of Transportation awarded the Railroad Research Foundation (RRF), a non-profit affiliate of the AAR, a Railroad Safety Technology Grant for a risk management tool that will help with the analysis of the 27 minimum factors to consider. The grant provided $1.54 million for enhancement and ongoing implementation of the Rail Corridor Risk Management System (RCRMS). RCRMS was developed for railroads with alternative routing and is, therefore, not effective for smaller or Class II or Class III railroads with limited or no alternative routes. These railroads were responsible for developing their own analysis and documentation. Accordingly, the Hazmat Transportation Analytical Risk Model (H–TRAM) was developed through an FRA Grant provided to RRF on behalf of the ASLRRA. Most recently, FRA funded an independent verification and validation of the model.

Determination of Need

There has long been considerable public and Congressional interest in the safe and secure rail routing of security-sensitive hazardous materials. In 2008, PHMSA, in coordination with FRA and the Transportation Security Administration (TSA), issued a final rule requiring, among other things, that rail carriers compile annual data on certain shipments of explosive, toxic by inhalation (TIH or PIH), and Class 7 (radioactive) materials; use the data to analyze safety and security risks along rail routes where those materials are transported; assess alternative routing options; and make routing decisions

based on those assessments, 73 FR 20752. These requirements were codified at 49 CFR 172.820.

The 2008 rule also requires rail carriers transporting ''security sensitive materials'' to select the safest and most secure route to be used in transporting those materials, based on the carrier's analysis of the safety and security risks on primary and alternate transportation routes over which the carrier has authority to operate.

The NTSB report of January 23, 2014, stated that at a minimum, the route assessments, alternative route analysis, and route selection requirements should be extended to key trains transporting large volumes of flammable liquid (NTSB Recommendation R–14–4). Additionally, in their comment on the NPRM, NTSB stated that the proposal to subject carriers transporting HHFTs to the routing requirements in 172.820 would satisfy the intent of R–14–4.

Although Class I rail carriers committed to voluntarily apply routing requirements to trains carrying 20 carloads or more of crude oil as a result of the Secretary's Call-to-Action:

- The voluntary actions do not extend beyond Class I railroads;
- The voluntary actions do not apply to all HHFTs;
- The proposed routing requirements would have provided a check on higher risk routes or companies; and
- The routing requirements would ensure that rail carriers continue their voluntary actions in the future.

Alternatives Considered

Alternative 1: No Action Alternative—Status Quo

Route planning and route selection provisions currently required for explosive, PIH, or Class 7 (radioactive) materials are not required for HHFTs. If the rule is not adopted, railroads would not be required to conduct route risk analysis nor are they required to reroute shipments over lower-risk routes. Specific identified criteria for the route and alternate route analyses may not be uniformly considered by all railroads, and written analyses of primary and alternate routes including safety and security risks would not be required. While the railroads are expected to continue voluntarily implementing these measures for crude oil, they have not made a similar commitment for ethanol trains (though PHMSA believes some of them may do so). The costs to society, the government, and the rail industry of an accident involving large shipments of flammable liquid are high. If no action is taken, the threat of catastrophic accidents in large populated areas or other sensitive environments will continue. This option would not result in any modification of § 172.820 to include HHFTs. PHMSA and FRA are not considering this alternative.

Alternative 2: Apply Routing to HHFTs

This alternative, adopted in the final rule, applies safety and security routing assessments and rerouting to HHFTs. Railroads would be required to assess current routing of these trains as well as practical alternative routes. Railroads would have to choose the lowest risk practical route to move HHFTs. This alternative focuses the routing requirements on the flammable liquid shipments that pose the greatest risk to public safety. Additionally, the final rule requires rail carriers to establish a point of contact with (1) state and/or regional Fusion Centers who coordinate with state, local and tribal officials on security issues and (2) state, local, and tribal officials that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.

This alternative requires railroads to balance these factors to identify the route that poses the lower risk. As such, they may, in certain cases, choose a route that eliminates exposure in areas with high population densities but poses a risk for more frequent events in areas with very low densities. In other cases the risk of derailment may be so low along a section of track that, even though it runs through a densely populated area, it poses the lowest total risk when severity and likelihood are considered. Glickman's estimate of safety improvements achievable by routing changes is based on an examination of how routing might vary as a rail carrier applies progressively heavier weights on various safety factors.[115] In practice, it is impossible to know how much weight rail carriers will give to safety when making routing decisions. As noted above, based on past routing plans submitted by rail carriers to FRA for approval, application of the routing requirements resulted in modest changes to company routing decisions. It is therefore unclear to what extent these requirements would improve safety. However, PHMSA believes applying these routing requirements to HHFTs would result in a net positive safety benefit.

Based on the determination of need, minimal cost of implementation and a vast majority of commenters supporting the proposal, PHMSA and FRA have chosen this alternative. It should be noted that the definition of HHFT has been narrowed to a train carrying 20 or more loaded tank cars in a continuous block or 35 or more loaded tank cars throughout the train consist loaded with flammable liquids (see above for discussion on HHFTs). PHMSA and FRA anticipate that this will lessen the impact on small businesses such as short line and regional railroads by eliminating a large percentage of manifest or mixed freight trains.

Impact on Small Entities

The costs of this alternative are discussed in great detail in the RIA. The total burden on small railroads over 20 years, for 160 small railroads affected, the cost, discounted at 7 percent. will be $7,236,778. The average cost per small railroad will be $45,230 over 20 years, discounted at 7 percent.

2. Requirement Area 2—Tank Car

Adopted Action

In this final rule, we are adopting requirements for new tank cars constructed after October 1, 2015, used to transport Class 3 flammable liquids in an HHFT to meet either the prescriptive standards for the DOT Specification 117 tank car (consistent with Option 2 of the NPRM except for the braking component) or the performance standards for the DOT Specification 117P tank car. Other authorized tank specification as specified in part 173, subpart F will also be permitted however, manufacture of a DOT specification 111 tank car for use in an HHFT is prohibited. In this final rule, we are also adopting retrofit requirements for existing tank cars in accordance with proposed Option 3 from the NPRM (excluding top fittings protection and steel grade). If existing cars do not meet the retrofit standard, they will not be authorized use in HHFT service after a packing group and tank car specification-based implementation timeline. This in effect would adopt different constructions standards for new and retrofitted cars used in an HHFT.

Tank cars built to the new standards as adopted in this final rule will be designated ''DOT Specification 117.'' In addition, we are adopting a performance standard for the design and construction of new tank cars or retrofitting of existing tank cars equivalent to the prescriptive DOT Specification 117 standards. Thus, a new or retrofitted tank car meeting the performance criteria will be designated as ''DOT

[115] Glickman, Theodore S. Erkut, Efhan, and Zschocke, Mark S. 2007. The cost and risk impacts of rerouting railroad shipments of hazardous materials. Accident Analysis and Prevention. 39. 1015–1025.

Specification 117P.'' Additionally, we are adopting a retrofit standard for existing tank cars meeting the DOT Specification 111 or CPC–1232 standard. A retrofitted tank car meeting the prescriptive standard will be designated as ''DOT Specification 117R.'' Please see ''Tank Car Specification'' portion of this rulemaking for further detail.

Determination of Need

Under the HMR, the offeror (shipper) must select a packaging that is suitable for the properties of the material. The DOT Specification 111 tank car is one of several cars authorized by the HMR for the rail transportation of many hazardous materials. The DOT Specification 111 tank car, which can be jacketed or unjacketed, is used for the almost all of crude oil and ethanol service by rail.

The alternatives proposed in the August 1, 2014 NPRM were intended to address the survivability of a tank car and to mitigate the damages of rail accidents far superior to those of the current DOT Specification 111 tank car. Specifically, the alternatives incorporate several enhancements to increase tank head and shell puncture resistance; thermal protection to survive a pool fire environment; and improved top fitting and bottom outlet protection during a derailment. These improvements are consistent with several NTSB safety recommendations. Under all alternatives, the proposed system of design enhancements would reduce the consequences of a derailment of tank cars transporting flammable liquids in an HHFT. There will be fewer tank car punctures, fewer releases from service equipment (top and bottom fittings), and delayed release of flammable liquid from the tank cars through pressure relief devices and thermal protection systems.

Alternatives Considered

On August 1, 2014, PHMSA, in consultation with the FRA, issued an NPRM in response to comments submitted as a result of an ANPRM. In the NPRM, we proposed three alternatives for newly manufactured tank cars to address the risks associated with the rail transportation of Class 3 flammable liquids in HHFTs. In this final rule, PHMSA considered the three tank car options and the status quo to address this emerging risk and they are as follows:

No-Action Alternative

This alternative would continue to authorize the use of the non-jacketed and jacketed DOT Specification 111 tank cars, including upgraded CPC–1232 non-jacketed and jacketed tank cars, for the transportation of crude oil and ethanol. This alternative imposes no benefits or costs to society as it would require no change to the current crude oil and ethanol tank car packaging.

Option 1: PHMSA and FRA Designed Tank Car

This alternative would mandate that newly manufactured and existing tank cars used for flammable liquids in a HHFT meet the Option 1 prescriptive or performance standard after a certain date in accordance with the following:

- 286,000 lb. GRL tank car that is designed and constructed in accordance with AAR Standard 286;
- Wall thickness after forming of the tank shell and heads must be a minimum of 9/16-inch constructed from TC–128 Grade B, normalized steel;
- Thermal protection system in accordance with § 179.18, including a reclosing pressure relief device;
- Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight as required in § 179.200–4;
- Full-height, ½-inch thick head shield meeting the requirements of § 179.16(c)(1);
- Bottom outlet handle removed or designed to prevent unintended actuation during a train accident;
- ECP brakes; and
- Roll-over protection (*i.e.,* tank car would be equipped with a top fittings protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 mph, in which the rolling protective housing strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector) (not applicable to existing tank cars).

This alternative achieves the highest safety enhancements of any of the options considered, and thus is expected to yield the highest benefit to safety and the environment. It also has the highest cost of any of the three tank car alternatives.

Option 2: AAR 2014 Tank Car (Selected for New Tank Car Construction)

The second alternative considered is described as the AAR 2014 car. This proposed standard was based on the AAR's updated new tank car standard, and approximately 5,000 of these new cars have been ordered by BNSF Rail Corporation.

As proposed in the NPRM, the Option 2 car would be required for both newly manufactured tank cars and existing tank cars used for flammable liquids in a HHFT. Tank cars could meet either the prescriptive or an equivalent performance standard. Under this alternative, tank cars have most of the safety features as the Option 1 tank car, including the same increase in shell thickness, but lack TIH top fittings protection and ECP brake equipment. In essence, examining these cars side by side in the following analysis provides a de facto comparison of the costs and benefits of equipping HHFTs with ECP braking.

This alternative provides the second highest benefits and the second highest costs of the three tank car options. This option was selected for new constructions (See braking section for discussion on braking required).

Option 3: Enhanced Jacketed CPC–1232 Tank Car (Selected as Retrofit Standard)

The third alternative considered is an enhanced, jacketed CPC–1232 tank car. It also has the same improvements made to the bottom outlet handle and pressure relieve valve as the Option 1 and Option 2 tank cars. This standard is the new tank car configuration PHMSA believes would have been built for HHFT service in the absence of regulation, based on commitments from two of the largest rail car manufacturers/leasers.

As proposed, the Option 3 car would be required for both newly manufactured tank cars and existing tank cars used for flammable liquids in a HHFT. Tank cars must meet either the prescriptive or performance standard in accordance with the proposed phase-out schedule. Because the industry has committed to building Enhanced Jacketed CPC–1232 standard tank cars for HHFT service, this alternative would not impose higher costs for newly manufactured tank cars. It would, however, impose costs associated with retrofitting older DOT Specification 111 tank cars to the new prescriptive or performance standard.

This alternative tank car design car has all of the safety features of the Option 2 car, except that it has ⅛-inch less shell thickness. Additionally, this tank car has most of the safety features of the Option 1 tank car, but it also has ⅛-inch less shell thickness, does not have ECP brakes, and does not have TIH top fittings protection.

Although this tank car design is a substantial safety improvement over the current DOT Specification 111 tank car, it does not achieve the same level of safety as the first two mandated alternatives considered. It is, however, the least costly alternative considered. This option was selected for retrofitting

existing tank cars (See braking section for discussion on braking required).

Impact on Small Entities

All small shippers will be directly impacted by this requirement, as the shipper is the regulated entity that must provide the packaging for shipping, in this case, the tank cars. It does not matter whether the small shipper owns the tank cars or leases them. The burden of the rulemaking and therefore the cost of tank cars will be imposed on the shippers, either through purchase costs, retrofit costs, or through higher lease payments. The estimated cost per tank car is a good estimate of the final cost to the shippers. A lease transaction only changes the method by which a shipper pays for the tank cars.

As noted above, small shippers are about 92 percent of all shippers. PHMSA assumes that small shippers on average ship half as much as the average shipper. Therefore, for this analysis, PHMSA estimates that small shippers ship 46 percent, half of 92 percent of the affected hazardous materials, and PHMSA assumes that they use the same percentage of tank cars, and therefore incur as a group, the same percentage of the total costs estimated in the economic analysis for retrofit of all tank cars. PHMSA's RIA cost estimate for the Final Rule tank car mandate is $1.78 billion discounted at 7 percent, and $2.27 billion discounted at 3 percent. The total burden on small shippers will therefore be 46 percent of that, or $0.819 billion discounted at 7 percent, and $1.04 billion discounted at 3 percent. The average cost per small shipper would be $0.819 billion discounted at 7 percent, and $1.04 billion discounted at 3 percent divided by 722 shippers, which yields costs per small shipper of $1.134 million discounted at 7 percent, and $1.672 million discounted at 3 percent. However, PHMSA believes that small shippers can pass on those costs to other parties in the supply chain, because all shippers face the same cost constraints. PHMSA believes this is not a substantial burden on any affected entity.

3. Requirement Area 3—Speed Restrictions

Adopted Action

PHMSA is requiring a 50-mph maximum speed limit for HHFTs in all areas. This action aligns with existing operational requirements imposed by AAR Circular No. OT–55–N. PHMSA expects there will be no costs associated with a speed restriction of 50 mph, as this action codifies current industry best practices. As such, PHMSA does not believe the 50-mph maximum speed limit for HHFTs will affect small entities, including small offerors and small railroads that qualify as small businesses. Small railroads (Class II and Class III railroads) customarily do not operate at speeds in excess of 50 mph, so the impact of reducing the maximum speed of HHFTs to 50 mph is expected to be minimal and potentially costless.

In further support of this view, PHMSA refers to a February 12, 2014 letter to the Secretary from the American Short Line and Regional Railroad Association (ASLRRA). In this letter, ASLRRA announced that they would recommend a 25-mph speed limit for unit trains carrying crude oil on all routes. Thus, small railroads will not be burdened by the 50-mph speed limit provided they are adhering to ASLRRA's recommended speed restriction.

PHMSA is also requiring a 40-mph speed limit for HHFTs within the limits of a High Threat Urban Area (HTUA), unless all tank cars containing flammable liquids meet or exceed the retrofit standards or the standards for the DOT Specification 117 tank car. Similar to the aforementioned 50-mph speed limit, the 40-mph speed limit for HHFTs in HTUAs is also generally consistent with voluntary commitments made by AAR ''Railroad Subscribers'' as a result of recent cooperation with the Department. Further, given ASLRRA's additional recommendation of a 25-mph speed limit for certain short line and regional trains carrying crude oil, small railroads should not be burdened by the 40-mph speed limit in HTUAs. PHMSA believes that most small railroads are adhering to ASLRRA's recommendation.

Determination of Need

Speed is a factor that contributes to derailments. Speed can influence the probability of an accident, as it may allow for a brake application to stop the train before a collision. Speed also increases the kinetic energy of a train resulting in a greater possibility of the tank cars being punctured in the event of a derailment. As more tank cars are punctured in a derailment, the likelihood and severity of releases of hazardous materials into the environment increases. Conversely, lower speeds reduce kinetic energy, reducing the possibility of puncture in a derailment, which in turn reduces the severity of hazardous material releases into the environment.

The growth in the production and transport of crude oil and ethanol in recent years has been accompanied by an increase in the number of rail derailments involving crude oil and ethanol. Given the projected continued growth of domestic crude oil and ethanol production and transport, and the growing number of train accidents involving crude oil and ethanol, PHMSA concludes that the potential for future severe train accidents involving HHFTs has increased substantially. As our organizational mission, PHMSA seeks to improve the safety of the transportation of hazardous materials in commerce, which includes reducing the incidence and severity of train derailments involving hazardous materials. Therefore, PHMSA has adopted certain speed restrictions as a way to lessen damages that would occur in the event of a derailment and to improve the overall safety of rail transportation of large quantities of Class 3 flammable liquids.

Alternatives Considered

PHMSA considered a range of alternatives relative to the adopted speed restrictions. Namely, PHMSA considered; the ''no action'' alternative, the various speed restrictions proposed in the NPRM, and different speed restrictions proposed by commenters.

Alternative 1: No Action Alternative—Status Quo

The ''no action'' alternative is the choice to uphold the status quo and forego new regulation related to speed restrictions. It is equivalent to the current regulatory environment absent this rulemaking. There is reason to believe that the ''no action'' alternative has some merit. Chiefly, trade associations and the industry at-large have made significant efforts to improve railroad safety, including the issuance of voluntary or recommended speed restrictions. If voluntary speed restrictions were indistinguishable to the adopted speed restrictions, and small railroads perfectly and uniformly adhered to these voluntary speed restrictions, PHMSA might not need to codify the adopted speed restrictions. However, these voluntary or recommended speed restrictions are inferior to the codified adopted speed restrictions in that they do not carry the weight of law. Further, PHMSA was not provided with sufficient evidence to show that 100 percent of small railroads were adhering to the voluntary or recommended speed restrictions. PHMSA has assumed that this kind of adherence is occurring, but cannot certify it. Moreover, the adopted speed restrictions are not indistinguishable to the voluntary ones. The voluntary speed restrictions apply to ''Key Crude Oil Trains,'' or similar trains, whereas PHMSA has expanded the scope of the

rule to include different Class 3 flammable liquids and different high-risk train configurations. Thus, the ''no action'' alternative is not the best course of action.

Alternative 2: 40-mph Speed Limits for HHFTs in all Areas

The 40-mph speed limits for HHFTs in all areas. This is option 1 in the NPRM. In this alternative, all HHFTs are limited to a maximum speed of 40 mph, unless all tank cars meet or exceed the performance standards for the DOT Specification 117 tank car.

Alternative 3: 40-mph Speed Limit for HHFTs in Populations of More Than 100,000 People

The 40-mph speed limits for areas with populations of more than 100,000 people alternative is option 2 in the NPRM. In this alternative, all HHFTs—unless all tank cars containing flammable liquids meet or exceed the standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while operating in an area that has a population of more than 100,000 people.

Alternative 4: 40-mph Speed Limits for HHFTs in HTUAs

The 40-mph speed limits for HHFTs in HTUA. This is option 3 in the NPRM. In this alternative, all HHFTs—unless all tank cars containing flammable liquids meet or exceed the standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while the train travels within the geographical limits of HTUAs. This was the most cost effective option proposed in the rulemaking.

In the NPRM, PHMSA proposed three 40-mph speed limits, including the adopted 40-mph speed limit in HTUAs, as well as two other 40-mph speed limits applicable to all areas and to areas with ''a population of more than 100,000 people.'' Thus, PHMSA's consideration of alternatives was publicly stated at the NPRM stage, and PHMSA afforded the public an opportunity to comment on the validity and expected impacts of these proposed speed limits. In the NPRM, the 40-mph speed limit in HTUAs was cited as Option 3, and the 40-mph speed limit in all areas and the 40-mph speed limit in any area with a population of more than 100,000 people were cited as Option 1 and Option 2, respectively.

Option 1 and Option 2 were not adopted for a variety of reasons that affect small and large entities alike. Option 1 and Option 2 are not as cost-effective and would be burdensome and overly restrictive relative to the 40-mph speed limit in HTUAs (Option 3). This sentiment was echoed by many commenters, including ASLRRA. According to PHMSA's cost/benefit analysis and commenter input, PHMSA has reason to believe that the implementation of Option 1 and Option 2 would create an unjustifiable burden on small entities, as well as on large railroads and offerors, and thus are not practical alternatives for small entities. Please refer to the Final RIA, as well as other sections of the rulemaking, for further summary and discussion of the NPRM's proposed 40-mph speed limits.

PHMSA is confident that the adopted speed restrictions—a 40-mph speed limit in HTUAs and a 50-mph speed limit for all HHFTs—constitute the best course of action and small carriers will be able to comply without undue burden. In fact, PHMSA expects that the adopted speed restrictions will impose only limited costs on small entities and will yield more safety benefits per unit of cost than other alternatives over time. ASLRRA's recommendation of a 25-mph speed limit to member railroads lends concrete support to this outlook.

Alternative 5—Speed Restrictions Based on Other Geographical Criteria

In addition to the alternatives proposed in the NPRM, various commenters offered alternatives that could be applied to small entities, such as small rail carriers. Various commenters suggested that PHMSA align the speed restrictions with different geographical criteria. Nevertheless, ASLRRA and AAR did not suggest that different geographical criteria be applied specifically to small rail carriers. On the contrary, ASLRRA's recommended 25-mph speed restriction specifically applied to short lines and regional rail lines carrying crude oil as a ''unit'' *on all routes.* Thus, PHMSA does not believe that different geographical criteria would be a practical alternative for small entities.

Impact on Small Entities

Most small railroads affected by this rule do not operate at speeds higher than the speed restrictions required or travel long distances over which the reduced speed would cause a significant impact. Additionally, in a February 12, 2014, letter to the Secretary, ASLRRA announced that they recommend to their members to voluntarily operate unit trains of crude oil at a top speed of no more than 25 mph on all routes.

The only small railroads that are likely to be affected by the speed restrictions are those that have relatively short mileage connecting two or more larger railroads, and that may operate at speeds higher than 30 mph. Those railroads do not originate HHFT, but let the larger railroads operate HHFTs over their track. Therefore there will be no speed restrictions imposed on these small railroads, only larger railroads operating over the small railroads' track.

The only Class III railroad which both has Class 4 or higher track (speeds above 40 mph) and also hauls crude oil or ethanol is also a commuter railroad serving a large city, and therefore not a small entity. Thus, the speed restrictions will not result in any net impact on small entities.

4. Requirement Area 4—Braking

Adopted Action

PHMSA and FRA are requiring that rail carriers transporting certain quantities of flammable liquids to equip trains with advanced braking systems. Specifically, this final rule requires all HHFTs operating in excess of 30 mph to have enhanced braking systems. At a baseline level, any train that contains a continuous block of 20 or more loaded tank cars or a total of at least 35 loaded tank cars throughout the train consist containing Class 3 flammable liquids (an HHFT) must have in place, at a minimum, a functioning two-way EOT device or a DP system to assist in braking.

With longer, heavier trains it is necessary to factor in train control issues. Therefore, PHMSA and FRA have specific braking requirements for trains that are transporting 70 or more loaded tank cars of Class 3 flammable liquids (referred to as high-hazard flammable trains or ''HHFUTs'') at speeds in excess of 30 mph. By January 1, 2021, any HHFUT transporting one or more tank car loaded with a Packing Group I flammable liquid will be required operate using an ECP brake system that complies with the requirements of 49 CFR part 232, subpart G. All other HHFUTs must be equipped with operative ECP brake systems by May 1, 2023, when traveling in excess of 30 mph.

Determination of Need

Braking systems reduce kinetic energy and therefore help prevent and mitigate the effects of train accidents. Since the First Safety Appliance Act of March 2, 1893, freight train operations in the U.S. have traditionally relied on air brakes to slow and stop a train. This conventional air brake system has proven to be reliable, but it has drawbacks. When a train is long and heavy, as is typically the case in the context of an HHFT, a conventional air brake system can easily take over one-half mile to bring a train

to a stop, even with the emergency brakes applied. Moreover, the length of a train will significantly affect the time it takes for the conventional air brakes to apply to the entire consist. It can take a number of seconds for the air brake system to function as air is removed from the system to engage the brakes, beginning with the cars nearest to the locomotive and working towards the rear of the train. For example, in a 100-car train it could take up to 16 seconds as the brakes fully apply sequentially from front-to-back. This lag in air brake application time from the front to the back of the train also can result in significant in-train buff and draft forces. These in-train forces can lead to wheel damage (*e.g.* slid flat spots) and can negatively impact rail integrity as these flat spots create a vertical impact force (''pounding'') on the rails. These are major contributing factors to derailments. In-train forces resulting from the application of conventional air brakes also can directly contribute to derailments, particularly in emergency situations, as freight cars can be forcefully bunched together when the train is brought to a stop quickly. These forces may also be amplified by the longitudinal slosh effect of a liquid lading, such as crude oil or ethanol. Such factors have led PHMSA and FRA to consider advanced brake signal propagation systems as a way to improve safety in the transportation of Class 3 flammable liquids by rail, particularly with respect to longer trains transporting 70 or more tank cars loaded with Class 3 flammable liquids. These more advanced systems have the capability to stop trains more quickly and reduce the number of braking-induced derailments.

Alternatives Considered

Alternative 1: No Action Alternative—Status Quo

If the braking requirements were not adopted, the damages estimated in the absence of this rulemaking would not be reduced, where possible, by advanced braking options. This alternative would also impose no costs. This alternative would also not codify voluntary agreements between the Class I railroads and the Department for Key Crude Oil trains. While those voluntary agreements would remain in place, it would not expand the requirements for advanced braking to other trains transporting flammable liquids that have been identified as high risk, nor would it include a requirement for ECP braking systems. PHMSA and FRA have not chosen this alternative.

Alternative 2: Two-Way End of Train Devices or Distributed Power

Alternative 2 would require each HHFT to be equipped and operated with either a two-way EOT device, as defined in 49 CFR 232.5 of this title, or DP, as defined in 49 CFR 229.5 of this title. This alternative would not mandate a requirement for ECP braking systems. Additionally, this alternative is closest to the voluntary agreements differing in that it applies to HHFTs and not a Key Crude Oil train. PHMSA and FRA believe this alternative would result in decrease in the number of tank cars punctured in a derailment by 13–16% compared to conventional braking systems. This alternative was considered but was not chosen.

Alternative 3 (*Applicable to Tank Car Option 1 Only*): Alternative 2, Plus ECP on All Newly Constructed and Retrofitted DOT Specification 117 Cars

This is the alternative proposed in the NPRM. Alternative 3 would require an HHFT to be equipped and operated with either a two-way EOT device, as defined in 49 CFR 232.5 of this title, or DP, as defined in 49 CFR 229.5 of this title. Additionally, a tank car manufactured in accordance with proposed § 179.202 or § 179.202–11 for use in a HHFT would be equipped with ECP brakes. HHFTs comprised entirely of tank cars manufactured in accordance with proposed § 179.202 and § 179.202–11 (for Tank Car Option 1 the PHMSA and FRA Designed Car, only), except for required buffer cars, would be operated in ECP brake mode as defined by 49 CFR 232.5. To reduce the burden on small carriers that may not have the capital available to install new braking systems, we proposed an exception. If a rail carrier does not comply with the proposed braking requirements above, we proposed that the carrier may continue to operate HHFTs at speeds not to exceed 30 mph.

Alternative 4: Tiered Braking Requirements Based on HHFTs and HHFUTs (Selected Alternative)

This alternative would require that rail carriers transporting certain quantities of flammable liquids to equip trains with advanced braking systems. Specifically, this alternative would require all HHFTs operating in excess of 30 mph to have enhanced braking systems. At a baseline level, any train that contains a continuous block of 20 or more loaded tank cars or a total of at least 35 loaded tank cars throughout the train consist containing Class 3 flammable liquids (an HHFT) must have in place, at a minimum, a functioning two-way EOT device or a DP system to assist in braking.

With longer, heavier trains it is necessary to factor in train control issues. Therefore, this alternative would require specific braking requirements for trains that are transporting 70 or more loaded tank cars of Class 3 flammable liquids at speeds in excess of 30 mph. Under this alternative, by January 1, 2021, any high-hazard flammable unit train (HHFUT) containing one or more tank cars loaded with a Packing Group I flammable liquid, operating in excess of 30 mph must have a functioning ECP brake system that complies with the requirements of 49 CFR part 232, subpart G. Whereas all other HHFUTs must be equipped with operative ECP brake systems by May 1, 2023, when traveling in excess of 30 mph. This was the selected option.

Impacts on Small Entities

Most small railroads affected by this rule do not operate at speeds higher than the speed restrictions required or travel long distances over which the reduced speed would cause a significant impact. Any small railroad that operates at speeds 30 mph or less would also not be impacted by the braking requirement. Additionally, in a February 12, 2014, letter to the Secretary, ASLRRA announced that they recommend to their members to voluntarily operate unit trains of crude oil at a top speed of no more than 25 mph on all routes.

ASLRRA commented to the docket that small railroads often operate older locomotives, and that retrofitting those locomotives to work with ECP brakes would be cost-prohibitive. PHMSA believes that the railroads that have the older locomotives hauling HHFTs are the same railroads that would not be adversely impacted by operating trains at speeds of 30 mph or less.

The only small railroads that are likely to be affected by the braking requirements are those that have relatively short mileage connecting two or more larger railroads, and that may operate at speeds higher than 30 mph. Those railroads do not originate HHFT, but let the larger railroads operate HHFTs over their track. PHMSA believes that all HHFTs from larger railroads will be assembled so that locomotives and cars with ECP brakes are kept together, so there will be no speed restrictions imposed. Thus, the speed restrictions will not result in any net impact on small entities.

5. Requirement Area 5—Classification of Unrefined Petroleum-Based Products

Adopted Action

The final rule requires any offeror of unrefined petroleum-based products for transportation to develop, implement, and update a sampling and testing program related to the classification and identification of properties for packaging selection of these materials (see ''Summary and Discussion of Public Comments'' for plan details). PHMSA believes that there would be an initial cost for each offeror of approximately $3,002 for the first year, and additional costs of $810 annually thereafter, for a total value, discounted at 7 percent over 20 years, of $10,514. PHMSA believes that this adopted section will not significantly burden any of these small entities.

Determination of Need

The offeror's responsibility to classify and describe a hazardous material is a key requirement under the HMR. Improper classification and failure to identify applicable material properties can have significant negative impacts on transportation safety. Proper classification is necessary ensure proper packaging, operational controls, and hazard communication requirements are met, all of which are important to mitigate the negative effects of a train derailment or other hazardous materials incident.

While the classification of manufactured products is generally well understood and consistent, unrefined petroleum-based products potentially have significant variability in their properties as a function of history, location, method of extraction, temperature at time of extraction, and the type and extent of conditioning or processing of the material. Manufactured goods and refined products, by definition, are at the other end of the spectrum from unrefined or raw materials. This means that the physical and chemical properties are more predictable as they are pure substances or well-studied mixtures. PHMSA and FRA audits of crude oil loading facilities, prior to the issuance of the February 26, 2014. Emergency Restriction/Prohibition Order, indicated that the classification of crude oil being transported by rail was often based solely on a Safety Data Sheet (SDS). The information is generic, providing basic data and ranges of values for a limited number of material properties. In these instances, it is likely no validation of the information is performed at an interval that would allow for detection of variability in material properties.

Alternatives Considered

Alternative 1: No Action Alternative—Status Quo

The industry would continue the status quo and sample the material based on the existing classification and characterization methods. Rail derailment and other accidents involving shipments of crude oil or other unrefined petroleum-based products that have been improperly classified may create potential risks for emergency responders. If PHMSA had adopted alternative 1, then there would be no added costs or benefits to the rule.

Alternative 2: Require Sampling and Testing Program for Mined Liquids and Gases as Proposed in NPRM

Under this alternative, PHMSA would require a documented sampling and testing plan for shippers of these mined gases and liquids in transportation. This plan would enable PHMSA and shippers of this commodity to more easily ascertain the specific classification and characteristics of the commodity and help to minimize potential risks when responding to a derailment and accident. Offerors would also certify that program is in place, document the testing and sampling program, and make program information available to DOT personnel, upon request.

This option was proposed in rulemaking, but only offerors petroleum-based products (*i.e.* petroleum crude oil, liquefied petroleum gas, and natural gas) were analyzed for the IRFA and in the draft RIA. Commenters did not provide sufficient data to justify expanding the definition beyond petroleum-based products. A detailed analysis of this option is provided in the final RIA,, but it is not adopted in this final rule.

Alternative 3: Require Sampling and Testing Program for Unrefined Petroleum Based Products.

This is the alternative adopted in this rulemaking. Under this alternative, PHMSA requires a documented sampling and testing plan for offerors of unrefined petroleum-based products in transportation. This plan will enable PHMSA and shippers of this commodity to more easily ascertain the specific classification and properties of the commodity and help to minimize potential risks when responding to a derailment or other accident. Offerors must also certify that program is in place, document the testing and sampling program, and make program information available to DOT personnel, upon request.

This revised definition narrows the scope of affected offerors from those offering all ''mined liquids and gases'' to only ''unrefined petroleum-based products.'' While the savings from the proposed definitions are not quantified, the clarification ensures that additional offerors will not be inadvertently impacted.

Impact on Small Entities

PHMSA believes that there would be an initial cost for each offeror of approximately $3,002 for the first year, and additional costs of $810 annually thereafter, for a total value, discounted at 7 percent over 20 years, of $10,514. PHMSA believes that this adopted section will not significantly burden any of these small entities.

6. Requirement Area 6—Notification

Adopted Action

On May 7, 2014, DOT issued an Emergency Order [116] (''the Order'') requiring each railroad transporting one million gallons or more of Bakken crude oil in a single train in commerce within the U.S. to provide certain information in writing to the SERCs for each state in which it operates such a train. The notification made under the Order included estimated frequencies of affected trains transporting Bakken crude oil through each county in the state, the routes over which it is transported, a description of the petroleum crude oil and applicable emergency response information, and contact information for at least one responsible party at the host railroads. In addition, the Order required that railroads provide copies of notifications made to each SERC to FRA upon request and to update the notifications when Bakken crude oil traffic materially changes within a particular county or state (a material change consists of 25 percent or greater difference from the estimate conveyed to a state in the current notification). In the August 1, 2014 NPRM, PHMSA proposed to codify and clarify the requirements of the Order and requested public comment on the various parts of the proposal.

After careful consideration of the comments and after discussions within PHMSA and FRA, we believe that for the final rule using the definition of the HHFT for notification applicability is a more conservative approach for affecting safer rail transportation of flammable liquid material; and is a more consistent approach because it aligns with the changes to other operational requirements, including routing.

[116] Docket No. DOT–OST–2014–0067 (Order).

The primary intent of the Order was to eliminate unsafe conditions and practices that create an imminent hazard to public health and safety and the environment. Specifically, the Order was designed to inform communities of large volumes of crude oil transported by rail through their areas and to provide information to better prepare emergency responders for accidents involving large volumes of crude oil. DOT issued the Order under the Secretary's authority to stop imminent hazards at 49 U.S.C. 5121(d). The Order was issued in response to the crude oil railroad accidents previously described, and it is in effect until DOT rescinds the Order or a final rule codifies requirements and supplants the requirements in the Order.

The adopted action is that DOT is removing the notification requirement language proposed in the NPRM and is instead using as a substitute the contact information language requirement that is already part of the additional planning requirements for transportation by rail found in § 172.820 of the HMR that now applies to HHFTs. As provided in § 172.820(g), each HHFT must identify a point of contact (including the name, title, phone number and email address) related to routing of materials identified in § 172.820 in its security plan and provide this information to: (1) State and/or regional Fusion Centers (established to coordinate with state, local and tribal officials on security issues and which are located within the area encompassed by the rail carrier's system); and (2) State, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.

Determination of Need

Recent accidents have demonstrated the need for action in the form of additional communication between railroads and emergency responders to ensure that the emergency responders are aware of train movements carrying large quantities of flammable liquid through their communities in order to better prepare emergency responders for accident response.

Alternatives Considered

Alternative 1: No Action Alternative—Status Quo

This alternative would maintain implementation of the Order issued on May 7, 2014. PHMSA estimated there are essentially no new costs associated with this alternative, and thus no burdens on small entities, because rail carriers are already subject to the Order.

Alternative 2: Utilizing Rail Routing POC for HHFTs

This alternative utilizes the contact information language requirement that is already part of the additional planning requirements for transportation by rail found in § 172.820 of the HMR. As provided in § 172.820(g), each HHFT must identify a point of contact (including the name, title, phone number and email address) related to routing of materials identified in § 172.820 in its security plan and provide this information to: (1) State and/or regional Fusion Centers (established to coordinate with state, local and tribal officials on security issues and which are located within the area encompassed by the rail carrier's system); and (2) State, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.

This is the favored alternative since it adds no additional cost and provides for consistency of notification requirements for rail carriers transporting material subject to routing requirements, *i.e.* trains carrying: (1) More than 2,268 kg (5,000 lbs.) in a single carload of a Division 1.1, 1.2 or 1.3 explosive; (2) a quantity of a material poisonous by inhalation in a single bulk packaging; (3) a highway route-controlled quantity of a Class 7 (radioactive) material; and now (4) Class 3 flammable liquid as part of a high-hazard flammable train (as defined in § 171.8). This option also addresses security sensitive and business related confidentiality issues that many comments addressed.

Alternative 3: Rescinding Emergency Order With No Corresponding Regulatory Change

This alternative effectively would return to the status quo prior to the publication of the emergency order. This EO was designed to inform communities of large volumes of crude oil transported by rail through their areas and to provide information to better prepare emergency responders for accidents involving large volumes of crude oil. As the primary intent of this EO was to eliminate unsafe conditions and practices that created an imminent hazard to public health and safety and the environment removal of this order without a corresponding action to reduce the risk is not acceptable and thus not selected.

Impacted on Small Entities

Small entities affected by this provision have been providing notification for crude oil shipments under the Emergency Order. As the notification utilizes the contact information language requirement that is already part of the additional planning requirements for transportation by rail found in § 172.820 of the HMR the impact on the small entities is included in the routing impacts. For a discussion of those impacts see the routing section of the FRFA.

7. Total Burden on Small Entities

Small Offerors Other Than Shippers

There will be no burden on small offerors that are not shippers, except those who must classify mined liquids and gases. Those small entities will face a total cost, discounted at 7 percent over 20 years, of $10,514 per small entity.

Small Shippers

The total impact per small shipper, before considering market forces, discounted at 7 percent over twenty years, will be $1.134 million discounted at 7 percent, and $1.672 million discounted at 3 percent, the costs of upgrading tank cars. However, PHMSA believes that small shippers can pass on those costs to other parties in the supply chain, because all shippers face the same cost constraints.

Small Railroads

The total impact per small railroad, discounted at 7 percent over twenty years, will be $45,230, the cost of routing analysis.

PHMSA has identified no additional significant alternative to this final rule that meets the agency's objective in promulgating this rule, and that would further reduce the economic impact of the rulemaking on small entities.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of Title 5 of the CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. In the August 1, 2014 NPRM, PHMSA requested a new information collection from the Office of Management and Budget (OMB) under OMB Control No. 2137–0628 entitled ''Flammable Hazardous Materials by Rail Transportation.'' PHMSA stated

that the NPRM may result in an increase in annual burden and costs under OMB Control No. 2137–0628 due to proposed requirements pertaining to the creation of a sampling and testing program for mined gas or liquid and rail routing for HHFTs, routing requirements for rail operators, and the reporting of incidents that may occur from HFFTs.

In the NPRM, we requested comment on whether PHMSA should require reporting of data on the total damages that occur as a result of train accidents involving releases of hazardous material, including damages related to fatalities, injuries, property damage, environmental damage and clean-up costs, loss of business and other economic activity, and evacuation-related costs. Currently, PHMSA only collects some of this information, and data verification is inconsistent. Further, we requested comments on whether PHMSA should require reporting on every car carrying hazardous material that derails, whether that car loses product or not. Such reporting would assist PHMSA in assessing the effectiveness of different kinds of cars in containing the hazardous materials that they carry. In response to the NPRM, PHMSA received general comments from the following individuals related to information collection:

American Fuel & Petrochemical Manufacturers (AFPM)

The AFPM commented that the criteria for modifying the sampling and testing program and what it seeks to address is vague. It adds that this will be another unnecessary paperwork requirement with no corresponding benefit. The AFPM survey and other studies confirm that Bakken Crude oils are correctly classified. They maintain that identification of flammable liquids by geographic, regional, or even a particular country of origin serves no known purpose except to impose unnecessary paperwork requirements.

We disagree that expanding existing classification requirements will not impact transportation safety. PHMSA and FRA audits of crude oil facilities indicated the classification of crude oil transported by rail was often based solely on a SDS. While the classification of manufactured products is generally well-understood and consistent, unrefined petroleum-based products potentially have significant variability in their properties as a function of time, location, method of extraction, temperature at time of extraction, and the type and extent of conditioning or processing of the material. As such, we feel it is necessary to require development and adherence to a consistent and comprehensive sampling and testing program, and to provide oversight for such a program.

Waterkeeper Alliance

The Waterkeeper Alliance noted that according to the proposed regulations, the new sampling and testing program must be ''documented in writing and retained while it remains in effect.'' Specifically, PHMSA is requiring that offerors keep on hand the most recent versions of the program documentation, provide that version to employees responsible for conducting the testing, and provide documentation to the DOT upon request. Waterkeeper recommended that PHMSA should, at a minimum, require that this information be submitted to FRA (and the public, upon request) and be kept on hand with the railroad or offeror so that responsible packaging decisions can be made based on that data.

PHMSA did not propose requiring third-party involvement with testing or submitting test results to a third party in the NPRM and, as such, is not adopting any such requirements. PHMSA did not propose regulatory changes to classification test procedures, and as such, is not adopting any such requirements. Furthermore, in the NPRM, PHMSA stated that we are not proposing a requirement for the retention of test results.

Bridger LLC

In the August 1, 2014 NPRM, PHMSA posed the question, ''PHMSA assumes no unjacketed tank cars would be in PG I service in 2015 and 2016, in the absence of this rule. Does this assumption match the expected service of unjacketed tank cars?'' Bridger firmly answered no, and in its comments asserted, ''Bridger note[d] that PHMSA assumes no non-jacketed tank cars would be in PG I service in 2015 and 2016, in the absence of this rule. Bridger adds that, ''PHMSA is under a mistaken belief that railcar manufacturers have stopped marketing railcars that are not Enhanced CPC–1232 railcars.'' Further, Bridger LLC stated that ''before PHMSA makes this key assumption regarding the rule, it should require the railcar manufacturers to provide accurate data and information regarding its marketing and manufacturing activities, issuing an information collection notice if necessary.'' Based on the substantive public comment received in response to the NPRM, in this final rule, PHMSA is confident its revised assumptions regarding fleet composition and new and existing outstanding tank car order configurations precludes the need to prepare an information collection notice.

George Washington University

The George Washington University urged PHMSA to be consistent with the requirements of the Paperwork Reduction Act, and with the text of its proposal. The George Washington University added PHMSA should commit to collecting the information needed to measure the rule's success.

Sampling and Testing Plans

In the NPRM PHMSA used data from the Hazmat Intelligence Portal from June 2014. For the Final Rule PHMSA pulled updated data from November 2014 and now estimates that there will be approximately 1,804 respondents up from 1,538, based on a review of relevant active registrations on the PHMSA Hazmat Intelligence Portal, each developing an average of one sampling and testing plan each year. First year hourly burden is estimated at 40 hours per response, or 72,160 burden hours; hourly burden for each subsequent year is estimated at 10 hours per response, or 18,040 burden hours. PHMSA assumes a Chemical Engineer is the labor category most appropriate to describe sampling methodologies, testing protocols, and present test results. The mean hourly wage for a Chemical Engineer was $45.56 in 2014, according to the Bureau of Labor Statistics. We inflate this wage by 60 percent to account for fringe benefits and overhead of $27.94 per hour, for a total weighted hourly wage of $75.05. At an average hourly cost of $75.05 per hour, first year burden cost for this proposed requirement is estimated at $5,415,605.00; burden cost for each subsequent year is estimated at $1,353,902.00.

Routing—Collection by Line Segment

PHMSA estimates that there will be approximately 170 respondents (10 for Class II Railroads; 160 for Class III Railroads) each submitting an average of one routing collection response each year, and each subsequent year. Hourly burden is assumed to be 40 hours per response, or 6,800 burden hours each year. PHMSA used a labor rate that combines two employee groups listed in the Bureau of Labor Statistics May 2012 Industry-Specific Occupational Employment and Wage Estimates: NAICS 482000—Rail Transportation occupational code 11–0000 ''Management Occupations'' and occupation code 43–6011 ''Executive Secretaries and Executive Administrative Assistants.'' A combination of these two groups will

probably be utilized to perform the requirements in this proposed rule. The average annual wages for these groups are $100,820 and $54,520 respectively. The resulting average hourly wage rate, including a 60 percent increase to account for overhead and fringe benefits, is $62.25. At an average hourly cost of $62.25 per hour, burden cost for the first year and each subsequent year is estimated at $423,300.00.

Routing Security Analysis

For the first year, PHMSA estimates that there will be approximately 170 respondents (10 for Class II Railroads; 160 for Class III Railroads). Class II Railroads are expected to submit 170 routing security analysis responses per year, based on the number of feasible alternate routes to consider after future possible network changes, with each response taking approximately 80 hours each, or 4,000 hours. At an average hourly cost of $62.25 per hour, first year burden cost for Class II Railroads is estimated at $249,000.00. Class III Railroads are expected to submit 320 routing security analysis responses per year, with each response taking approximately 40 hours, or 12,800 hours. At an average hourly cost of $62.25 per hour, first year burden cost for Class III Railroads is estimated at $796,800.00. Railroads will also be required to provide an alternate routing security analysis. Class II Railroads are expected to submit 40 routing security analysis responses per year, based on the number of feasible alternate routes to consider after future possible network changes, with each response taking approximately 120 hours each, or 4,800 hours. At an average hourly cost of $62.25 per hour, first year burden cost for Class II Railroads is estimated at $298,800.00. Class III Railroads are expected to submit 160 alternate routing security analysis responses per year, with each response taking approximately 20 hours, or 3,200 hours. At an average hourly cost of $62.25 per hour, first year burden cost for Class III Railroads is estimated at $199,200.00.

PHMSA assumes that new route analyses are necessary each year based on changes in commodity flow, but that after the first year's route analyses are completed, analyses performed on the same routes in subsequent years will take less time. For each subsequent year, PHMSA estimates that there will be approximately 170 respondents (10 for Class II Railroads; 160 for Class III Railroads). Class II Railroads are expected to submit 50 routing security analysis responses per year, with each response taking approximately 16 hours each, or 800 hours. At an average hourly cost of $62.95 per hour, subsequent year burden cost for Class II Railroads is estimated at $49,800.00. Class III Railroads are expected to submit 320 routing security analysis responses per year, with each response taking approximately 8 hours, or 2,560 hours. At an average hourly cost of $62.95 per hour, first year burden cost for Class III Railroads is estimated at $159,360.00. Railroads will also be required to provide an alternate routing security analysis. For each subsequent year, PHMSA estimates that there will be approximately 170 respondents (10 for Class II Railroads; 160 for Class III Railroads). Class II Railroads are expected to submit 40 routing alternate security analysis responses per year, with each response taking approximately 12 hours each, or 480 hours. At an average hourly cost of $62.95 per hour, subsequent year burden cost for Class II Railroads is estimated at $29,800.00. Class III Railroads are expected to submit 160 alternate routing security analysis responses per year, with each response taking approximately 2 hours, or 320 hours. At an average hourly cost of $62.95 per hour, first year burden cost for Class III Railroads is estimated at $19,920.00.

Incident Reporting

PHMSA estimates there will be 289 incidents over 20 years, for an average of 15 incidents per year, involving the derailment and release of crude oil/ethanol. Each report would be submitted by a single respondent and would take approximately 2 additional hours to submit per response, compared to the current requirements. At an average hourly cost of $62.95 per hour, burden cost is estimated at $1,825.55. We do not currently have sufficient data to estimate the number of respondents and responses that would be required if PHMSA extended incident reporting requirements to derailments not involving a product release.

Total

We estimate that the total information collection and recordkeeping burden for the requirements as specified in this final rule will be as follows:

OMB No. 2137–0628, ''Flammable Hazardous Materials by Rail Transportation'' First Year Annual Burden:

Total Annual Number of Respondents: 1,989.

Total Annual Responses: 2,559.

Total Annual Burden Hours: 103,789.

Total Annual Burden Cost: $7,384,533.55.

Subsequent Year Burden:

Total Annual Number of Respondents: 1,989.

Total Annual Responses: 2,559.

Total Annual Burden Hours: 29,029.

Total Annual Burden Cost: $2,037,988.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4375), requires that Federal agencies analyze the environmental impacts of proposed actions. If an agency does not anticipate that a proposed action will have a significant impact on the environment, the Council on Environmental Quality (CEQ) regulations provide for the preparation of an environmental assessment (EA) to determine whether a proposed action has significant effects and therefore requires an environmental impact statement or finding of no significant impact (FONSI). The EA must include discussions of (1) the need for the proposed action, (2) alternatives to the proposed action as required by NEPA section 102(2)(E), (3) the environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted (40 CFR 1508.9(b)).

This Final EA includes responses to public comments received on the EA in the NPRM. One change in the Final EA is the addition of an alternative in response to various comments for expedited DOT Specification 111 (DOT–111) tank car usage discontinuance, ''Alternative of 2018 Removal of DOT–111 Tank Cars from Service.'' PHMSA has likewise not carried the ''ANPRM Alternative,'' found in the NPRM draft EA, forward in this Final EA. This is because the ANPRM included several actions that are not within the scope of this rulemaking. As discussed below, PHMSA considered, but eliminated from detailed consideration, an immediate removal of DOT–111 tank cars. Lastly, this Final EA now also includes additional data and calculations to support discussions.

1. Need for the Proposal

The purpose of this rulemaking is to address serious safety and environmental concerns revealed by recent train accidents involving high-hazard flammable trains (HHFTs). This final rule is designed to lessen the

frequency and consequences of train accidents involving the unintentional release flammable liquids from HHFTs. The purpose of the regulations for enhanced tank car standards and operational controls for high-hazard flammable trains is to prevent spills by keeping flammable liquids, including crude oil and ethanol, in rail tank cars and mitigating the severity of incidents should they occur.

U.S. crude oil production has risen sharply in recent years, with much of the increased output moving by rail. In 2008, U.S. Class I railroads originated 9,500 carloads of crude oil. In 2013, the number of rail carloads of crude oil surpassed 400,000. The Association of American Railroads (AAR) reported 229,798 carloads in the first half of 2014. In 2013, there were over 290,000 carloads of ethanol originated in the United States. This data suggests an increasing need to transport flammable liquids by rail.

The growing reliance on trains to transport large volumes of flammable liquids, particularly crude oil and ethanol, under the current regulatory framework, poses a risk to life, property, and the environment. These risks of HHFTs have been highlighted by the recent derailments of trains carrying crude oil in Casselton, North Dakota; Aliceville, Alabama; Lac-Mégantic, Quebec, Canada and Mount Carbon, West Virginia and recent derailments of trains carrying ethanol in Arcadia, Ohio and Cherry Valley, Illinois. This rule also addresses the National Transportation Safety Board (NTSB) recommendations regarding accurate classification, enhanced tank car integrity, rail routing, and oversight.

2. Alternatives

In developing this rule, PHMSA considered the following alternatives:

No Action Alternative

In the no action alternative, PHMSA would not issue a final rule, and the current regulatory standards would remain in effect. This would allow for the indefinite continued use of the DOT–111 tank cars to transport crude oil and ethanol.

In addition, the no action alternative would result in no new operational controls. Specifically, a classification and sampling plan would not be adopted. Selection of the no action alternative would not include mandates to sample and test materials, and carriers/offerors might engage or continue to engage in the practice of using inaccurate safety data sheets (SDSs) to classify their products. HHFT carriers also would not be required to consider the 27 safety and security factors to determine routing. Moreover, if PHMSA selected the no action alternative, the requirement to communicate with state and/or regional fusion centers about routing decisions would not take effect, and information would not be as easily available to authorized personnel.[117] If PHMSA selected the no action alternative, no new speed restrictions would take effect.

Finally, no action would continue the status quo with regard to braking systems. The final rule proposes a two-tiered, cost-effective and risk-based solution to reduce the number of cars and energy associated with train accidents. Without action, the current braking systems would continue to be used and the highest-risk train sets (larger HHFTs) would continue using the same braking systems.

Selected Alternative

The selected alternative, which was originally discussed in the draft EA, and is more fully discussed in the preamble has a phase-out schedule depicted in Table EA1 below. The amendments included in this alternative are more fully addressed in the preamble and regulatory text sections of this final rule. However, they generally include:

- New defined term of ''High-hazard flammable train;''
- Rail routing requirements as specified in Part 172, Subpart I of the HMR;
- Sampling and testing program designed to ensure proper classification and characterization of unrefined petroleum-based products;
- Phase in requirements for updated braking devices and braking systems;
- Speed restrictions for rail cars that do not meet the safer DOT–117 standard; and
- Phase-out DOT–111 cars in HHFTs and require DOT–117 for such HHFTs, as follows.[118]

TABLE EA1—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 (DOT–111) TANKS FOR USE IN HHFTS

Tank car type/service	Retrofit deadline
Non Jacketed DOT–111 tank cars in PG I service	(January 1, 2017 *). January 1, 2018.
Jacketed DOT–111 tank cars in PG I service	March 1, 2018.
Non-Jacketed CPC–1232 tank cars in PG I service	April 1, 2020.
Non Jacketed DOT–111 tank cars in PG II service	May 1, 2023.
Jacketed DOT–111 tank cars in PG II service	May 1, 2023.
Non-Jacketed CPC–1232 tank cars in PG II service	July 1, 2023.
Jacketed CPC–1232 tank cars in PG I and PG II service ** and all remaining tank cars carrying PG III materials in an HHFT (pressure relief valve and valve handles).	May 1, 2025.

* The January 1, 2017 date would trigger a retrofit reporting requirement, and tank car owners of affected cars would have to report to DOT the number of tank cars that they own that have been retrofitted, and the number that have not yet been retrofitted.

** We anticipate these will be spread out throughout the 120 months and the retrofits will take place during normal requalification and maintenance schedule, which will likely result in fleet being retrofit sooner.

Alternative of 2018 Removal of DOT–111 Tank Cars From Service

This alternative includes the same amendments as the selected alternative above, but would discontinue the use DOT–111 cars in HHFTs on a more accelerated schedule than the selected alternative. Specifically, for the purposes of analyzing this alternative in the environmental assessment, the retrofit deadlines for Non Jacketed DOT–111 tank cars in PG I service, Non Jacketed DOT–111 tank cars in PG II service, and Jacketed DOT–111 tank cars in PG I and PG II service would all be expedited to meet a deadline of October 1, 2018 (41 months). In this environmental assessment and its

[117] Fusion centers serve as first responder emergency communication networks.

[118] The preferred alternative in the NPRM included a compliance deadline of October 1, 2017, for PG I service, October 1, 2018, for PG I service, and October 1, 2020, for PG III service.

analysis, all references to an expedited phase-out of DOT–111 tank cars by 2018 refer to this specific population of DOT–111 tank cars in PG I and PG II service only.

Alternatives Considered but Not Carried Forward

PHMSA received a range of comments asking that it consider an immediate ban or other expedited discontinuance of all DOT–111 tank cars for crude and ethanol transport. PHMSA considered the impacts of immediately banning the use of the DOT–111 tank car in HHFTs. However, PHMSA concluded in the regulatory impact analysis (RIA) included in this rulemaking that an immediate ban of the DOT–111 tank car is not a reasonable alternative because the rail industry could not replace rail cars immediately and would not be able to immediately switch to other transportation modes. This would cause supply chain disruptions, increased shipping costs, and increased reliance on trucks to make up for lost transport capacity. This increased reliance on trucks could have detrimental environmental and safety implications. As such, PHMSA concluded that a ban by 2016 would be impractical. Therefore, PHMSA more fully examined the impacts of a schedule that would phase out the use of all DOT–111 tank cars in PG I and PG II service by 2018, which is more aggressive than the selected alternative.

3. Environmental Impacts of the Selected Action and Alternatives No-Action Alternative:

If PHMSA were to select the no-action alternative, current regulations would remain in place, and no new provisions would be added. However, the safety and environmental threats that result from the increasing use of HHFTs would not be addressed. The existing threat of derailment and resulting fire, as exhibited in serious accidents like Lac-Mégantic, Quebec, which resulted in 47 fatalities, and Aliceville, Alabama, where we estimate that 630,000 gallons of crude oil entered navigable waters, destroying a several acres of wetlands and forest, would continue. Clean-up is ongoing for both of these accidents. For more information on safety and environmental risks, please see the RIA.

As noted in the Final Rule, NTSB has identified these tank cars as vulnerable to puncture. No action would allow for the long term continuation of transportation of flammable liquids by rail in large volumes in the DOT–111 tank car. In addition, if no action were taken PHMSA would not adopt the DOT–117 tank car standard for new construction. This would lead to market uncertainty and leave important safety benefits unrealized.

If PHMSA selected the no action alternative, the safety benefits of the sampling program would not be realized. These requirements are intended to ensure the proper safety precautions are applied to each carload. Without these protections, first responders could face greater challenges in responding to incidents, and their efforts could be less effective at mitigating the impacts of a release.

Selection of the no action alternative would also not include requirements to share routing selection information with state authorities and/or fusion centers. This requirement is intended to aid first responders to best respond to incidents to mitigate the effects of a release.

If PHMSA selected the no action alternative, speed restrictions would not take effect. Speed restrictions decrease the kinetic energy involved in accidents and are intended to decrease the amount of hazardous materials released when a derailment or incident occurs. Similarly, the no action alternative would not include the safety benefits of more advanced braking systems to reduce the likelihood or severity of derailments.

Selected Alternative

In considering the various alternatives, PHMSA analyzed the following potential environmental impacts of each amendment in the selected alternative.

The extension of the existing rail routing requirements in 49 CFR 172.820 to include HHFTs will require that rail carriers consider safety and security risk factors such as population density along the route; environmentally-sensitive or significant areas; venues along the route (stations, events, places of congregation); emergency response capability along the route; etc., when analyzing and selecting routes for those trains. Use of routes that are less sensitive could mitigate the safety and environmental consequences of a train accident and release, were one to occur. It is possible that this requirement and consideration of the listed risk factors could cause rail carriers to choose routes that are less direct, potentially increasing the emission of greenhouse gases and other air pollutants. PHMSA, however, concluded that the reduction in risk to sensitive areas outweighs a slight increase in greenhouse gases. Furthermore, consideration of emergency response capabilities along the route could result in better environmental mitigation in the event of a release. The purpose of environmental mitigation is to decrease impacts to environmental media such as air and water.

Next, the requirement for offerors to develop sampling and testing plans is intended to ensure that unrefined petroleum products are properly characterized to ensure that: (1) The proper regulatory requirements are applied to each shipment to minimize the risk of incident, (2) first responders have accurate information in the event of a train accident, and (3) the characteristics of the material are known and fully considered so that offerers and carriers are aware of and can mitigate potential threats to the integrity of rail tank cars. PHMSA believes that this provision will reduce the risk of release of these materials.

PHMSA has calculated in the RIA that braking and speed restrictions, especially for older DOT–111 tank cars, will reduce the likelihood of train accidents that result in the release of flammable liquids. PHMSA has also shown that the braking requirements could improve fuel efficiency, thereby reducing greenhouse gas emissions. The effective use of braking on a freight train can result in some accident avoidance. In addition, the effective use of braking on a freight train can potentially lessen the consequences of an accident by diminishing in-train forces, kinetic energy, etc., which can reduce the likelihood of a tank car being punctured and decrease the likelihood of a derailment. Lessening the likelihood of derailments translates into a reduction in the probability of releases into the environment.

These benefits are amplified when a train operates in ECP brake mode, particularly as train length increases to 70 or more cars. The system-wide implementation of ECP brakes on high-hazard flammable unit trains also will potentially improve the efficiency of the rail system by permitting trains to run closer together because of the improved performance of the brake system. The final rule cites business benefits related to operating in ECP brake mode (*e.g.,* reduced fuel consumption, longer inspection intervals, real time diagnostics, greater control stopping and starting etc.) Additionally, system-wide implementation of ECP brakes will improve the efficiency of the rail system by permitting trains to run closer together because of the improved performance of the brake system.

PHMSA concluded that the phasing-out of DOT–111 tank cars in HHFTs will reduce risk of release because of the improved integrity and safety features of the DOT–117. The DOT–117 will provide bottom outlet protection and a

high capacity pressure relief valve. To improve integrity and puncture resistance of the tank, DOT–117 has a full-height ½ inch minimum thickness head shield, an 11-gauge jacket, and a 9⁄16 inch shell. This is a significant improvement compared to the existing DOT–111, which has no head shield, or jacket requirement and is constructed with a 7⁄16 inch thick shell.

The DOT–117 tank car must have a thermal protection system, capable of surviving a 100-minute pool fire after a train accident. The 100-minute survivability period is intended to provide emergency responders time to assess an accident, establish perimeters, and evacuate the public as needed. This thermal protection is critical in limiting human health risks to the public and first responders and limiting environmental damage in the event of a train accident. The introduction of the new DOT–117, along with the phase-out of the DOT–111 used in HHFTs will result in the manufacturing of some new tank cars to replace retirements and to accommodate new investment. PHMSA recognizes that performed a quantitative analysis the newer tank cars are heavier such that their transport will result in somewhat greater use of fuel and in turn greater release of air pollutants, including carbon dioxide. However, PHMSA has discussed in the RIA that the increased integrity of the tank cars, designed to reduce the risk of release of high-hazard flammable materials to the environment, causing air and likely water pollution, positively outweighs a relatively small increase in air pollution.

While the nature of the phase-out is intended to minimize the unintended impacts of an accelerated phase-out, increased manufacture of replacement rail tank cars could nevertheless result in greater short-term release of greenhouse gases and use of resources needed to make the new tank cars, such as steel. PHMSA, however, concluded that these possible temporary increases are far outweighed by the increased safety and integrity of each railcar and each train and the decreased risk of release of crude oil and ethanol to the environment. The phase out of older tank cars will not create a solid waste burden on the environment because they will be recycled. Any environmental burdens will be limited to energy inputs and pollutants from the recycling and manufacture processes, which we do not expect to be significant since in the absence of this rule, the same number of tank cars would eventually be built. The only difference under this rule is that the same number of tank cars will be built to the new standard.

Alternative of 2018 Removal of DOT–111 Tank Cars From Crude Oil and Ethanol Service

If PHMSA were to select the provisions of this additional Final EA alternative, we recognize that some safety and environmental risks could be reduced in the short-term. For example, due to improved integrity of new tank cars, such as puncture resistance and thermal protection, rail incidents would be less likely to result in release of crude oil or ethanol to the environment. Also, the releases that still occurred would likely be smaller in volume. These avoided or decreased release amounts would avoid increased water, soil, and air pollution. PHMSA recognizes that derailment of HHFTs has resulted in water, soil, and air pollution. Such releases also pose risk to human health and public safety.

PHMSA examined and performed a quantitative analysis of a 2018 phase-out alternative in this Final EA, which includes an expedited phase out of all DOT–111s in PG I and PG II service. PHMSA used this alternative, which requires removal from service of all DOT–111 tank cars for transport of crude oil and ethanol by the end of 2018, as a quantitative baseline. In its analysis of the full impacts of removal of DOT–111 tank cars by the end of 2018, PHMSA found disadvantages to this alternative. As explained more specifically in Appendix A, the transportation capacity lost to the retirement of the DOT–111 tank cars would likely cause crude and ethanol transportation to be shifted to truck/highway transportation (*i.e.* ''modal shift''). Trucks already figure prominently into the supply chains for both crude [119] and ethanol,[120] although so far there has been limited evidence of large scale long-haul shipments of crude oil from wells to refineries.[121] A shortage of rail tank cars would make highway transportation a more viable option for long-haul transportation. Highway transportation is more polluting both in terms of air pollutants and hazardous materials released due to incidents. Furthermore, highway transportation has higher fatality and injury rates. PHMSA's analysis concluded that a 2018 removal of the DOT–111s would cause increased air pollutant emissions in 2019, for both rail and truck modes of transportation.

Furthermore, PHMSA had to consider the costs of such a drastic regulatory change to industry, energy production, and the public. Comments submitted by industry indicated that costs imposed by a 2018 complete removal of the entire DOT 111 fleet would be prohibitive and that such an action would potentially disrupt supply, which could affect the public in the form of higher energy prices. Further, such a sudden removal would greatly constrain the capacity of manufacture and repair required for other tank cars, potentially resulting in shortages for transport of other commodities.

PHMSA weighed the benefit of reductions in releases from rail accidents that would result from the 2018 removal of DOT–111 tank cars against increased air pollution and highway accidents, often resulting in releases, that would result from a temporary modal shift, along with extremely high cost to industry and the public, and the other regulatory provisions in this rulemaking that are also aimed at reducing derailments and releases. Upon consideration of all these factors, PHMSA recognizes the need to upgrade the rail car fleet, but found that a targeted phase-out of the DOT–111 tank cars was the most prudent and protective approach.

4. Discussion of Environmental Impacts in Response to Comments

PHMSA received various comments on this rulemaking. Some commented directly on the NPRM EA, while others commented more generally on the rule while focusing their comments on environmental matters. We have tried to address both types of comments here.

Rail Capacity/Modal Shift/Rail Tank Car Phase-Out

The RSI's comments suggested that PHMSA's proposed retrofit schedule could result in modal shift. RSI suggested that from 2015–2025, over-the-road trucks needed to replace railcar capacity would emit 6.41 million more tons of carbon dioxide (CO_2) than the railcars would have had they been permitted to remain in service. PHMSA received similar comments from Archer Daniels Midland (ADM).

[119] See: Davies, Phil (2013). ''Busting bottlenecks in the Bakken.'' Federal Reserve Bank of Minneapolis. *https://www.minneapolisfed.org/publications/fedgazette/busting-bottlenecks-in-the-bakken*. Over 70 percent of crude oil in North Dakota is shipped to a pipeline or rail terminal by truck.

[120] See: Bevil, Kris (2011). ''By Train, By Truck, or By Boat: How Ethanol Moves and Where it's Going.'' Ethanol Producer Magazine. The percentage of ethanol moved by long-haul truck is believed to be 20 percent.

[121] See: Sheppard, David, and Nichols, Bruce (2011). ''Insight: Oil Convoy Blues: Trucking Game Foils Crude Traders.'' New York: Reuters. *http://www.reuters.com/article/2011/10/14/us-cushing-trucks-idUSTRE79D0OP20111014*.

The selected alternative considers comments submitted by the RSI with regard to the retrofit capacity of rail yards and the build capacity of tank car manufacturers. PHMSA has carefully considered retrofit and build capacity, and concluded that its selected alternative will not result in any shift to highway transportation due to shortages of compliant tank cars. PHMSA agrees that shifting transportation to highway would increase emissions and the risk of incidents due to higher rates of highway traffic incidents than rail incidents. However, under this final rule, as explained in more detail below, PHMSA concluded that there will not be any losses of capacity from retrofits or excessive retirements of tank cars that will lead to a backlog of new tank car orders (such a backlog would represent lost rail car capacity that would require more shipments by truck), and thus no modal shift will occur under the final rule; the final rule was carefully drafted to avoid modal shift.

Nonetheless, in order to better address comments received in response to the NPRM (relating to environmental matters) and NPRM EA, PHMSA simulated the impact of a schedule in which DOT–111 tank cars in PG I and PG II service would be phased out by 2018, which was proposed in the NPRM and supported by some environmental organizations. The full details of this analysis are provided in Appendix A. Such a scenario would lead to increased retirements and unplanned new orders of tank cars. Initially, these new orders plus existing planned orders would exceed the build capacity of rail car manufacturers. Because crude oil and ethanol producers would still need to move their products, the lack of suitable tank cars would likely result in modal shift from rail transportation to highway transportation, which would result in greater air pollution. The backlog of orders would be eliminated after 2019, which would result in a shift back to rail, eliminating related increased emissions. Under the selected alternative, a mode shift does not occur. Table EA2 provides PHMSA's analysis of increased emissions resulting from a 2018 phase-out of DOT–111 tank cars. As stated previously, due to increased modal shifts that would be necessitated, we expect magnified pollution and negative safety effects for phase-outs prior to 2018.

TABLE EA2—EXCESS EMISSIONS OF CRITERIA AIR POLLUTANTS AND CARBON DIOXIDE UNDER 2018 PHASE-OUT SCHEDULE OF DOT–111 TANK CARS

Year/tons	Hydrocarbons (HC, including volatile for truck)	Carbon monoxide (CO)	Oxides of nitrogen (NO_X)	Particulate matter (PM)	Carbon dioxide (CO_2)
2015	0	0	0	0	0
2016	0	0	0	0	0
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	2,584	9,931	34,633	1,571	4,759,930

RSI cites analyses prepared for them by the Brattle Group (a consulting firm specializing in economic analysis) estimating that replacing lost rail capacity in 2017 with truck transportation for crude oil and ethanol shipments in North America would require approximately 20,000 trucks carrying over 370,000 truckloads on North American highways. In 2018, the year in which the loss of capacity would be fully felt, RSI further cites the Brattle Group, indicating that replacement transportation would require approximately 70,000 trucks carrying almost 1.6 million loads and that over the road (OTR) truckers spilled 58 percent more total liquid hazardous material from 2002–2009 than railroads per year and per billion ton-miles. AAR has also expressed concern that, ''[t]he result would be the diversion of traffic off the rail network and onto less safe and less environmentally friendly modes of transportation.'' AAR also commented that rail is an environmentally superior form of transportation.

PHMSA's calculations for increased emissions were lower than those provided by RSI. In particular, PHMSA's selected alternative would result in no shift to highway transportation. PHMSA's analysis also does not concur with RSI that the less stringent phase-out schedule in the selected alternative would lead to 6.41 million additional tons of CO_2 emissions. PHMSA disagrees with RSI's projections for the number of additional trucks needed to account for lost DOT–111 capacity. PHMSA's analysis indicates that 20,000 additional trucks (*i.e.,* the amount cited by RSI as required to replace lost rail capacity in 2017) would be capable of handling about half of all the crude and ethanol shipped in DOT–111 tank cars in a given year.[122] Moreover 70,000 trucks (*i.e.,* the amount cited by RSI as required to replace lost rail capacity in 2018) could handle 123,375 ton miles of crude and ethanol, or almost all of the total crude and ethanol ton miles Brattle provided for 2014.[123] Given these facts, PHMSA calculates that RSI overestimates the number of additional trucks needed.

The Center for Biological Diversity (CBD), Clean Water Action, Delaware River Keeper, Earthjustice, Environment New Jersey, and Powder River Basin Resource Council have all expressed concern about the integrity of the DOT–111 tank cars and propose that these cars be removed from service immediately, as opposed to PHMSA's planned phase-out.[124] As discussed above, PHMSA recognizes commenters' concerns regarding DOT–111 phase-out schedule, but PHMSA deemed this option to be impractical because of negative impacts from modal shift, including increased incidents resulting in release of hazardous materials and increased fatalities, as illustrated in Tables EA3 and EA4.

[122] If one assumes that a semi-truck/tank-trailer and semi-truck/trailer combinations are both able to haul about 47,000 pounds of cargo 150,000 miles per year, divided by 2 to account for empty return trips, or 1.76 million ton-miles per year. Currently, about 96.5 percent (just over 40,000 million ton miles) of ethanol transported by rail is in DOT–111 tank cars, and 29 percent of crude oil (or about 30,000 million ton miles) by rail is in DOT–111 tanks cars. An additional 20,000 trucks could handle 35,250 million ton miles (1.76 million × 20,000) of hazardous material, and 70,000 trucks could handle 123,375 million ton miles (1.76 million × 70,000) of hazardous material.

[123] Brattle concludes 85,062 million ton miles of crude oil in 2014 and 46,243 million ton miles of ethanol. PHMSA concludes that 70,000 trucks would be able to transport 94 percent of that volume.

[124] The Friends of the Gorge and the Adirondack Mountain Club were co-commenters with CBD.

TABLE EA3—ADDITIONAL HAZARDOUS MATERIAL INCIDENTS AND RELEASES FROM MODAL SHIFT

[2018 DOT–111 Tank Car Phase-Out Scenario]

Year	Year	Year
2015	2015	2015
2016	2016	2016
2017	2017	2017
2018	2018	2018
2019	2019	2019

TABLE EA4—ADDITIONAL FATALITIES AND INJURIES FROM MODE SHIFT

[2018 DOT–111 Tank Car Phase-Out Scenario]

Year	Fatalities	Injuries
2015	0.00	0.00
2016	0.00	0.00
2017	0.00	0.00
2018	0.00	0.00
2019	94.68	2,359.83

PHMSA expects additional air emissions, spills and fatalities in 2019 as a result of the shift to highway transportation. Our analyses indicate that the amendments in this final rule will actually realize much greater savings in these areas over the long-term. The RIA prepared for this final rule examines a period from 2015 to 2034, but benefits would continue to accrue beyond this analysis period. We have therefore decided that it is not prudent to modify the regulation in response to these comments.

NEPA Requirements

The CBD and ADM commented that an Environmental Impact Statement (EIS), as opposed to an EA, is required under NEPA. PHMSA determined that an EA was appropriate to determine whether to prepare an EIS or a FONSI. An EIS is necessary when a proposed action will have significant environmental impacts. At the outset, PHMSA performed a NEPA best practice environmental checklist analysis for this rulemaking, examining all facets of the environment that could potentially be impacted. This rulemaking does not authorize and will not result in new construction of rail infrastructure or new transportation of hazardous materials. These factors, which impact the environment, are already in existence and are ongoing. Since the primary purpose and function of the rulemaking is to decrease the already existing risk of releases of crude oil and ethanol, the rulemaking does not result in any significant new environmental impacts. Based on the analysis completed for this EA, PHMSA does not agree that this rulemaking could result in significant environmental impacts that would require the preparation of an EIS, and therefore PHMSA intends to issue a FONSI.

The CBD noted in its comments that PHMSA should initiate an Endangered Species Act consultation with FWS/NMFS in order to fully assess areas where HHFTs have the potential to impact listed species and critical habitat. As stated above, the intent of this rule is to prevent releases of hazardous chemicals to the environment. This rulemaking is not authorizing any new impacts to protected species or habitats, as rail transportation of hazardous materials and high-hazard flammable material is ongoing and rail infrastructure already exists. Increased regulation of ongoing transportation of hazardous materials will not jeopardize continued existence of any species and will not result in the destruction of habitat. Therefore, no consultation is required. While the routing provisions included in this rulemaking could alter the routes HHFTs take, the ''Rail Risk Analysis Factors'' that rail operators must consider in selecting routes include the consideration of ''environmentally sensitive and significant areas.'' See Appendix D to Part 172. Therefore, PHMSA concluded that improved routing selection and the eventual universal use of safer tank cars will result in a reduction in risk to endangered species.

Riverkeeper 2266 stated its concerns regarding potential oil spills entering the Hudson River. Riverkeeper asserted that the characteristics of the River would make cleanup especially difficult and complicated. Riverkeeper 2266 also commented that spills could hurt the tourist-based economy, wildlife, and riverfront communities. Lastly, Riverkeeper 2266 and others expressed concerns that PHMSA's new safety standards only apply to trains of 20 cars or more with Class 3 flammable liquids, even though devastating effects to the environment could also occur for trains with 19 or fewer cars.

In the NPRM, PHMSA proposed to define HHFT to mean a single train carrying 20 or more carloads of a Class 3 flammable liquid. This definition aligns with the definition of ''Key Train'' in OT–55N. Many commenters raised concerns regarding the ambiguity of this definition as it would be applied to crude oil and ethanol trains and suggested that this definition would inadvertently include manifest trains that did not pose as high a risk as unit trains. PHMSA subsequently revised the definition of HHFT to ''20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train.'' While the point regarding the potential environmental impacts associated the transport 19 or less tank cars of flammable liquid cars is valid, the focus of the final rule is on trains in which the flammable liquid cars are concentrated in large blocks.

Environmental Justice and Other Environmental Factors

Commenters, such as ADM, Clean Water Action Pennsylvania, and Earthjustice commented that an Environmental Justice (EJ) assessment should be included in the EA. Earthjustice's [125] comments alleged that low income and minority communities would face double the impact of other communities because many occur within one-mile blast zones of train tracks subject to this rulemaking. Both Earthjustice and Clean Water Action (Pennsylvania) also commented that PHMSA should have performed a complete EJ assessment for this rulemaking.

This rulemaking has no role in the siting of already existing railroad lines. This rulemaking also does not authorize new hazardous materials transportation; these activities are ongoing. The purpose of the rulemaking is to decrease the risk of release of crude oil and ethanol. PHMSA has calculated in the RIA that consideration of the Rail Risk Analysis Factors will reduce risk of release in general, especially in densely populated areas, as railroad operators will now be required to consider population density, places of congregation, and presence of passenger traffic, among other factors to encourage selection of the most prudent routes. PHMSA, therefore, does not agree that there is potential for this rulemaking to have a disparate impact on low income or minority populations. Consideration of the Rail Risk Analysis Factors will reduce risk of release in densely populated areas where low income and minority populations are likely to be located.

This rulemaking also has no impact on historic preservation or wetlands and floodplains because it does not authorize any new construction. It is also not reasonable that this rulemaking would indirectly or cumulatively result in new construction. It simply attempts to make existing hazardous materials

[125] Forest Ethics, Sierra Club, NRDC and Oil Change International were co-commenters with Earthjustice.

transportation safer for the environment and public safety.

5. Agencies Consulted

PHMSA worked closely with the FRA, EPA, and DHS/TSA in the development of this final rulemaking for technical and policy guidance. PHMSA also considered the views expressed in comments to the ANPRM and NPRM submitted by members of the public, state and local governments, and industry.

6. Conclusion

The provisions of this rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by rail, thereby reducing the risks of release of crude oil and ethanol and consequent environmental damage. PHMSA has calculated that this rulemaking will decrease current risk of release of crude oil and ethanol to the environment. Therefore, PHMSA finds that there are no significant environmental impacts associated with this final rule.

Appendix A

Environmental Assessment Supporting Calculations

PHMSA performed calculations to analyze the additional air emissions, hazardous materials incidents, quantity of hazardous material spilled, fatalities, and injuries from two options to phase-out DOT–111 rail tanks cars. As discussed, PHMSA calculated these impacts to be minimal for the selected alternative because no shift to highway transportation is anticipated.

Selected Alternative

The schedule for retrofitting DOT–111 and CPC–1232 tank cars and mandating use of tank cars that comply with the new standards is not expected to reduce tank car capacity for shipping crude and ethanol. Consequently, the deleterious effects of shipments being shifted to highway transportation on trucks will be avoided. The new tank car standards and other provisions of the rule are expected to reduce the risk of hazardous materials incidents, and the severity of those incidents that do occur. As discussed under ''Selected alternative'' in Section 3 of the Final EA, this alternative is anticipated to provide positive benefits for the environment and safety.

2018 Phase-Out of DOT–111 Tank Cars Alternative

The alternative of prohibiting use of all DOT–111 tank cars in 2018 is the scenario that PHMSA staff could envision as physically possible that would both (a) negatively impact railroads and shippers' ability to continue transport of crude oil and ethanol by rail and (b) have the greatest chance of resulting in modal shift. PHMSA calculates that a modal shift resulting from a decrease in the number of tank cars authorized to transport flammable liquids, notably crude oil and ethanol, would have significant deleterious effects on safety and the environment. The evaluation of this scenario assumes that there will be a sufficient number of trucks and drivers to handle the additional volume of crude oil and ethanol. Because it is unclear whether this additional trucking capacity would actually be available, these results can be considered an upper limit on potential environmental impacts.

Per ton-mile of transportation, cargo tank motor vehicles (CTMVs) emit significantly higher levels of volatile organic compounds, non-volatile hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, and particulate matter than freight rail. In addition, the fatality and injury rate per ton-mile from accidents is significantly higher than from freight rail. In estimating the size of this modal shift, PHMSA employs several key assumptions.

1. There are approximately 33,000 DOT–111 tank cars in service that transport high-hazard flammable material.

2. Rail tank car manufacturers have an annual build capacity of roughly 24,000 cars.[126] Manufacturers will not permanently increase capacity to deal with short-run spikes in demand.

3. Under this alternative, a total phase-out of DOT–111s would occur by the end of 2018. Shippers would find alternative methods to transport their products to account for any of the 33,000 DOT–111s not replaced by this time.

4. Shippers or carriers will spread out replacing/removing from service DOT–111 tank cars over time.

Please see the RIA prepared for this rule for additional information on these assumptions.

Based on these assumptions, PHMSA estimated that at the end of 2018, there would be a backlog of 12,239 DOT–111 tank cars that would not meet the retrofit deadline, but that these would be replaced by new, compliant tank cars by the end of 2019. In the meantime, their carrying capacity would shift to CTMVs. The capacity and backlog of tank cars is presented in the table below.

TABLE EA5—DOT–111 REPLACEMENT SCHEDULE, 2018 PHASE-OUT OF DOT–111 TANK CARS

Year	Initial DOT–111s	Actual DOT–111s replaced	Backlog of DOT–111s replaced
2015	32,831	0	32,831
2016	0	4,413	28,418
2017	0	7,941	20,477
2018	0	8,238	12,239

Table EA 6 below shows the relative amounts of emissions in grams per ton-mile for freight rail and CTMV.

TABLE EA6—EMISSION RATES BY MODE, GRAMS PER MILLION TON MILES,[127] 2018 PHASE-OUT OF DOT–111 TANK CARS

Mode/Pollutant	HC (VOC for truck)	CO	NO_X	PM	CO_2
Railroad*	0.018201	0.055600	0.353600	0.010251	21.140000
Truck*	0.100000	0.370000	1.450000	0.060000	171.830000

[126] RSI concluded that over 21,000 new deliveries of CPC–1232 tank cars will occur in 2014. In addition, over 600 new jacketed DOT–111s were delivered in the first quarter of 2014. Based on these two figures, PHMSA has concluded that build capacity is at least 24,000 cars per year.

[127] Kruse, C. J., Protopapas, A., and Olson, L. (2012). *A Modal Comparison of Domestic Freight Transportation Effects on the General Public: 2001–2009.* Arlington, VA: National Waterways Foundation. Retrieved from *http://nationalwaterwaysfoundation.org/study/FinalReportTTI.pdf.*

PHMSA concluded that 47,000 million ton miles of ethanol would be transported per year by rail between 2015 and 2018, and that about 108,000 million ton miles of crude oil will be transported on average per year. PHMSA concluded that about 96 percent of ethanol transported by rail is currently shipped in DOT–111 tank cars, and that about 29 percent of crude oil transported by rail is shipped in these tank cars. Assuming these proportions in the hypothetical scenario, DOT–111s would be used to transport about 45,300 million ton miles of ethanol (96% × 47,000) and 31,500 million ton miles of crude oil (29% × 108,000). All told, about 76,869 million ton miles of crude and ethanol would be shipped in DOT–111 tank cars on average per year, and each of the 32,831 DOT–111 tank cars in crude and ethanol service would handle on average 1.7 million ton miles per year. That is, the loss of each individual DOT–111 tank car would require a shift of 1.7 million ton miles of crude or ethanol per rail tank car to another mode.

Rail car manufacturers have excess capacity for replacing some, but not all, of older DOT–111s. The backlog presented by a complete DOT–111 phase out by 2018 translates into lost DOT–111 rail-car capacity that would have to be handled by CTMVs. Table EA7 equates the lost capacity to ton-miles shifted to CTMV. It is important to note that these are the maximum amounts of ton-miles that could be shifted to truck. These amounts will be constrained by the availability of trucks and drivers to handle these additional loads.[128]

TABLE EA7—TON-MILES OF CRUDE AND ETHANOL SHIFTED TO CTMV, 2018 PHASE-OUT OF DOT–111 TANK CARS

Year	Percent DOT–111 ton miles shifted to CTMV	Total DOT–111 ton miles	DOT–111 ton-miles shifted to CTMV
2016	0.0	76,869	0
2017	0.0	76,869	0
2018	0.0	76,869	0
2019	37.28	76,869	28,655.75

PHMSA applied the ton-miles shifted to CTMV presented in Table EA7 to the emissions per ton-mile presented in Table EA6 to calculate the additional emissions that result from constraining rail car capacity by an expedited 2018 retirement schedule for DOT–111s.

TABLE EA8—ADDITIONAL TONS OF EMISSIONS FROM MODE SHIFT, 2018 PHASE-OUT OF DOT–111 TANK CARS

Year/Tons	HC (VOC for truck)	CO	NO_X	PM	CO_2
2015	0	0	0	0	0
2016	0	0	0	0	0
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	2,584	9,931	34,633	1,571	4,759,930

PHMSA examined the additional hazardous material incidents and quantities of hazardous material released that could occur from a mode shift to CTMVs. *Table EA9* below presents the spill rates and gallons of hazardous material released per million ton miles by rail and highway modes.

TABLE EA9—HAZARDOUS MATERIALS INCIDENT AND SPILL RATES PER MILLION TON-MILES, 2018 PHASE-OUT OF DOT–111 TANK CARS

Mode	Number spills/million ton-miles	Number gallons spilled/million ton-miles
Railroad	0.000339	4.889386
Truck	0.001371	10.411803
Difference	0.001032	5.522417

Multiplying the annual the ton-miles (the ''Percent DOT–111 Ton-Miles Shifted to CTMV'' column) presented in Table EA7 by the ''difference'' row for hazardous material incident and release rates in Table EA9 yields the additional number of hazardous material incidents and quantity of hazardous material incident released, which are presented in Table EA10. PHMSA concluded that a shift to truck for transporting crude oil and ethanol that would have been transported in DOT–111 tank cars would lead to nearly 30 additional hazardous material incidents and over 158,000 additional gallons of hazardous material per incident released in 2019.

[128] An estimate of the number of trucks needed can be calculated using the following assumptions and parameters:

1. A standard semi-truck weighs 20,000 pounds, a tank trailer weighs about 13,000 pounds, and the maximum gross vehicle weight rating for a tractor-trailer is 80,000 pounds. Each truck can transport up to 47,000 pounds of ethanol or crude oil.

2. A fully utilized tractor trailer travels up to 500 miles per day for up to 300 days per year, or a total of 150,000 miles per year.

3. Trucks will make return trips empty, so their maximum annual transport capacity is halved.

A typical semi-truck/tank-trailer combination can transport up to 1.7652 million ((((47,000 × 150,000) ÷ 2,000) ÷ 2) ÷ 1,000,000) ton miles of crude or ethanol per year. A mode shift of 15,200 million ton miles would require an additional 8,861 trucks. This is a relatively small addition to the current number of such vehicle combinations currently operating. PHMSA concluded that the availability of trucks is unlikely to constrain the amount of crude oil and ethanol that could be shifted to highway transportation.

TABLE EA10—ANTICIPATED ADDITIONAL HAZARDOUS MATERIAL INCIDENTS AND RELEASES FROM MODE SHIFT, 2018 PHASE-OUT OF DOT–111 TANK CARS

Year	Spills	Gallons
2015	0	0
2016	0	0
2017	0	0
2018	0	0
2019	29.57	158,249

Lastly, PHMSA examined the additional transportation fatalities, and injuries that could occur from a mode shift to CTMVs. Table EA11 presents accident, fatality, and injury rates per million ton mile for rail and CTMV.

TABLE EA11—ADDITIONAL ACCIDENT, INJURY, AND FATALITY RATES PER MILLION TON MILES BY MODE,[129] 2018 PHASE-OUT OF DOT–111 TANK CARS

Mode	Additional fatalities	Additional injuries
Railroad	0.000525	0.005183
Truck	0.003829	0.087534
Difference	0.003304	0.082351

Multiplying the ton-miles presented in Table EA7 (the ''Percent DOT–111 Ton-Miles Shifted to CTMV'' column) by the ''difference'' row for fatality and injury rates in Table EA11 yields the anticipated additional number of fatalities and injuries from truck transportation instead of rail transportation, which are presented in Table EA12. PHMSA concluded that a shift to truck for transporting crude oil and ethanol that would have been transported in DOT–111 tank cars would lead to nearly 95 additional deaths and about 2,300 additional injuries in 2019.

TABLE EA12—ADDITIONAL FATALITIES AND INJURIES FROM MODAL SHIFT, 2018 PHASE-OUT OF DOT–111 TANK CARS

Year	Fatalities	Injuries
2015	0	0
2016	0	0
2017	0	0
2018	0	0
2019	94.68	2,359.83

H. Privacy Act

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

I. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

Similarly, the Trade Agreements Act of 1979 (Public Law 96–39), as amended by the Uruguay Round Agreements Act (Public Law 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

For further discussion on the impacts of harmonization see the ''Harmonization'' portion of ''Miscellaneous Relevant Comments'' Section of this rulemaking.

J. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary of

[129] Kruse, C. J., Protopapas, A., and Olson, L. (2012). *A Modal Comparison of Domestic Freight Transportation Effects on the General Public: 2001–2009.* Arlington, VA: National Waterways Foundation. Retrieved from *http://nationalwaterwaysfoundation.org/study/FinalReportTTI.pdf*

Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The amendments in this rule address safety and security vulnerabilities regarding the transportation of hazardous materials in commerce.

K. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

L. Executive Order 13211

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 a notice of inquiry, advance NPRM, and NPRM) 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.

PHMSA has evaluated this action in accordance with Executive Order 13211. See the environmental assessment section for a more thorough discussion of environmental impacts and the supply, distribution, or use of energy. PHMSA has determined that this action will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

XI. Regulatory Text

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, we are amending title 49, chapter I, subchapter C, as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 2. In 171.7, redesignate paragraphs (k)(2) through (4) as (k)(3) through (5) and add new paragraph (k)(2) to read as follows:

§ 171.7 Reference material.

* * * * *

(k) * * *

(2) AAR Manual of Standards and Recommended Practices, Section C—III, Specifications for Tank Cars, Specification M–1002 (AAR Specifications for Tank Cars), Appendix E, Design Details, implemented April 2010; into §§ 179.202–9, and 179.202–12(f).

* * * * *

■ 3. In § 171.8 definitions of ''High-hazard flammable train'' and ''High-hazard flammable unit train'' are added in alphabetical order to read as follows:

§ 171.8 Definitions.

* * * * *

High-hazard flammable train (HHFT) means a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.

High-hazard flammable unit train (HHFUT) means a single train transporting 70 or more loaded tank cars containing Class 3 flammable liquid.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 5. In § 172.820:

■ a. In paragraph (a)(2), remove the word ''or'' from the end;

■ b. In paragraph (a)(3), remove the period and add ''; or'' to the end; and

■ c. Add paragraphs (a)(4) and (b)(1)(i) and (ii).

The additions read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

(a) * * *

(4) A high-hazard flammable train (HHFT) as defined in § 171.8 of this subchapter.

(b) * * *

(1) * * *

(i) A rail carrier subject to additional planning requirements of this section based on paragraph (a)(4) of this section, must complete the initial process by March 31, 2016, using data for the six month period from July 1, 2015 to December 31, 2015; or

(ii) A rail carrier subject to additional planning requirements of this section based on paragraph (a)(4) of this section, must complete the initial process by March 31, 2016, using data for all of 2015, provided the rail carrier indicates in their initial analysis that it has chosen this option.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 7. Section 173.41 is added to subpart B to read as follows:

§ 173.41 Sampling and testing program for unrefined petroleum-based products.

(a) *General.* Unrefined petroleum-based products offered for

transportation must be properly classed and described as prescribed in § 173.22, in accordance with a sampling and testing program, which specifies at a minimum:

(1) A frequency of sampling and testing that accounts for any appreciable variability of the material (*e.g.,* history, temperature, method of extraction [including chemical use], location of extraction, time of year, length of time between shipments);

(2) Sampling prior to the initial offering of the material for transportation and when changes that may affect the properties of the material occur (*i.e.,* mixing of the material from multiple sources, or further processing and then subsequent transportation);

(3) Sampling methods that ensure a representative sample of the entire mixture, as offered, is collected;

(4) Testing methods that enable classification of the material under the HMR;

(5) Quality control measures for sample frequencies;

(6) Duplicate sampling methods or equivalent measures for quality assurance;

(7) Criteria for modifying the sampling and testing program; and

(8) Testing or other appropriate methods used to identify properties of the mixture relevant to packaging requirements (*e.g.,* compatibility with packaging, identifying specific gravity for filling packages).

(b) *Certification.* Each person who offers a hazardous material for transportation shall certify, as prescribed by § 172.204 of this subchapter, that the material is offered for transportation in accordance with this subchapter, including the requirements prescribed by paragraph (a) of this section.

(c) *Documentation, retention, review, and dissemination of program.* The sampling and testing program must be documented in writing (*i.e.* hardcopy or electronic file thereof) and must be retained for as long as the sampling and testing program remains in effect, or a minimum of one year. The sampling and testing program must be reviewed at least annually and revised and/or updated as necessary to reflect changed circumstances. The most recent version of the sampling and testing program must be available to the employees who are responsible for implementing it. When the sampling and testing program is updated or revised, all employees responsible for implementing it must be notified, and the most recent version must be made available.

(d) *Access by DOT to program documentation.* Each person required to develop and implement a sampling and testing program must maintain a copy of the sampling and testing program documentation (or an electronic file thereof) that is accessible at, or through, its principal place of business, and must make the documentation available upon request at a reasonable time and location to an authorized official of the Department of Transportation.

■ 8. In § 173.241, paragraph (a) is revised to read as follows:

§ 173.241 Bulk packagings for certain low-hazard liquid and solid materials.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks; and AAR Class 203W, 206W, and 211W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable liquids) in Packing Group III, for use in high-hazard flammable train service, unless retrofitted to the DOT Specification 117R retrofit standards or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized for use in high-hazard flammable train service unless retrofitted prior to the dates in the following table:

Packing group	DOT 111 not authorized on or after	DOT 111 built to the CPC–1232 not authorized on or after
III	May 1, 2025	May 1, 2025.

(2) Conforming retrofitted tank cars are to be marked ''DOT–117R.''

(3) Conforming performance standard tank cars are to be marked ''DOT–117P.''

* * * * *

■ 9. In § 173.242, paragraph (a) is revised to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks and AAR Class 206W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable liquids) in Packing Group II and III, for use in high-hazard flammable train service, unless retrofitted to the DOT Specification 117R retrofit standards, or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized for use in high-hazard flammable train service unless retrofitted prior to the dates in the following table:

Packing group	DOT 111 not authorized on or after	DOT 111 built to the CPC–1232 industry standard not authorized on or after
II	May 1, 2023 (jacketed and non-jacketed)	July, 1 2023 (non-jacketed). May 1, 2025 (jacketed).
III	May 1, 2025	May 1, 2025.

(2) Conforming retrofitted tank cars are to be marked ''DOT–117R.''

(3) Conforming performance standard tank cars are to be marked ''DOT–117P.''

* * * * *

■ 10. In § 173.243, paragraph (a) is revised to read as follows:

§ 173.243 Bulk packaging for certain high-hazard liquids and dual-hazard materials that pose a moderate hazard.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 fusion-welded tank car tanks; and Class 106 or 110 multi-unit tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Except as otherwise provided in this section, DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized to transport Class 3 (flammable liquids) in Packing Group I, for use in high-hazard flammable train service, unless retrofitted to the DOT Specification 117R retrofit standards or the DOT Specification 117P performance standards provided in part 179, subpart D of this subchapter.

(1) DOT Specification 111 tank cars and DOT Specification 111 tank cars built to the CPC–1232 industry standard are no longer authorized for use in high-hazard flammable train service unless retrofitted prior to the dates in the following table:

Packing group	DOT 111 not authorized on or after	DOT 111 built to the CPC–1232 industry standard not authorized on or after
I	January 1, 2017 (non-jacketed report trigger) January 1, 2018 (non-jacketed) March 1, 2018 (jacketed).	April 1, 2020 (non-jacketed). May 1, 2025 (jacketed).

(2) Conforming retrofitted tank cars are to be marked ''DOT–117R.''

(3) Conforming performance standard tank cars are to be marked ''DOT–117P.''

* * * * *

PART 174—CARRIAGE BY RAIL

■ 11. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 12. Section 174.310 is added to subpart G to read as follows:

§ 174.310 Requirements for the operation of high-hazard flammable trains.

(a) *Applicability.* Each rail carrier operating a high-hazard flammable train (as defined in § 171.8 of this subchapter) must comply with each of the following additional safety requirements with respect to each high-hazard flammable train that it operates:

(1) *Routing.* The additional planning requirements for transportation by rail in accordance with part 172, subpart I of this subchapter;

(2) *Speed restrictions.* All trains are limited to a maximum speed of 50 mph. The train is further limited to a maximum speed of 40 mph while that train travels within the limits of high-threat urban areas (HTUAs) as defined in § 1580.3 of this title, unless all tank cars containing a Class 3 flammable liquid meet or exceed the DOT Specification 117 standards, the DOT Specification 117P performance standards, or the DOT Specification 117R retrofit standards provided in part 179, subpart D of this subchapter.

(3) *Braking.* (i) Each rail carrier operating a high-hazard flammable train (as defined in § 171.8 of this subchapter) operating at a speed in excess of 30 mph must ensure the train is equipped and operated with either a two-way end-of-train (EOT) device, as defined in 49 CFR 232.5, or a distributed power (DP) system, as defined in 49 CFR 229.5.

(ii) By January 1, 2021, each rail carrier operating a high-hazard flammable unit train (HHFUT) comprised of at least one tank car loaded with a Packing Group I material, at a speed exceeding 30 mph must ensure the train is equipped with ECP brakes that meet the requirements of 49 CFR part 232, subpart G, except for buffer cars, and must be operated in ECP brake mode as established in 49 CFR part 232, subpart G.

(iii) By May 1, 2023, each rail carrier operating a high-hazard flammable unit train (HHFUT) not described in paragraph (a)(3)(ii) of this section, at a speed exceeding 30 mph must ensure the train is equipped with ECP brakes that meet the requirements of 49 CFR part 232, subpart G, except for buffer cars, and must be operated in ECP brake mode as established in 49 CFR part 232, subpart G.

(iv) Each buffer car in an high-hazard flammable unit train that is not equipped with ECP brakes will be counted in determining the percentage of cars with effective and operative brakes during the operation of the train, as required under 49 CFR 232.609.

(v) Alternate brake systems may be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

(4) *New tank cars.* After October 1, 2015, tank cars manufactured for use in a HHFT must meet:

(i) DOT Specification 117, or 117P performance standard in part 179, subpart D of this subchapter; or

(ii) An authorized tank specification as specified in part 173, subpart F of this subchapter.

(5) *Retrofit reporting* Owners of non-jacketed DOT–111 tank cars in PG I service in an HHFT, who are unable to meet the January 1, 2017, retrofit deadline specified in § 173.243 (a)(1) are required to submit a report by March 1, 2017, to Department of Transportation. A group representing owners may submit a consolidated report to the Department of Transportation in lieu of individual reports from each tank car owner. The report must include the following information regarding the retrofitting progress:

(i) The total number of tank cars retrofitted to meet the DOT–117R specification;

(ii) The total number of tank cars built or retrofitted to meet the DOT–117P specification;

(iii) The total number of DOT–111 tank cars (including those built to CPC–1232 industry standard) that have not been modified;

(iv) The total number of tank cars built to meet the DOT–117 specification; and

(v) The total number of tank cars built or retrofitted to a DOT–117, 117R or 117P specification that are ECP brake ready or ECP brake equipped.

(vi) Entities required to submit a report under this paragraph shall submit subsequent follow-up reports containing the information identified in this paragraph within 60 days of being notified by PHMSA and FRA.

(b) [Reserved]

PART 179—SPECIFICATIONS FOR TANK CARS

■ 13. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

Subpart D–Specifications for Non-Pressure Tank Car Tanks (Classes DOT–111AW, 115AW, and 117AW)

■ 14. The heading for subpart D is revised to read as set forth above.

■ 15. The heading for § 179.200 is revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks (Class DOT–111, DOT–117).

* * * * *

■ 16. The heading for § 179.200–1 is revised to read as follows:

§ 179.200–1 Tank built under these specifications must meet the applicable requirements in this part.

* * * * *

■ 17. Sections 179.202 and 179.202–1 are added to read as follows:

§ 179.202 Individual specification requirements applicable to DOT–117 tank car tanks.

§ 179.202–1 Applicability.

Each tank built under these specifications must conform to the general requirements of § 179.200 and the prescriptive standards in §§ 179.202–1 through 179.202–11, or the performance standard requirements of § 179.202–12.

■ 18. Sections 179.202–3 through § 179.202–13 are added to read as follows:

§ 179.202–3 Approval to operate at 286,000 gross rail load (GRL).

A tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). See § 179.13.

§ 179.202–4 Thickness of plates.

The wall thickness after the forming of the tank shell and heads must be, at a minimum, 9/16 of an inch AAR TC–128 Grade B, normalized steel, in accordance with § 179.200–7(b).

§ 179.202–5 Tank head puncture resistance system.

The DOT–117 specification tank car must have a tank head puncture resistance system in conformance with § 179.16(c). The full height head shields must have a minimum thickness of ½ inch.

§ 179.202–6 Thermal protection system.

The DOT–117 specification tank car must have a thermal protection system. The thermal protection system must conform to § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

§ 179.202–7 Jackets.

The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge A1011 steel or equivalent; and flashed around all openings so as to be weather tight. A protective coating must be applied to the exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket.

§ 179.202–8 Bottom outlets.

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

§ 179.202–9 Top fittings protection.

The tank car tank must be equipped with top fittings protection conforming to AAR Specifications for Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

§ 179.102–10 ECP brakes.

(a) By January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(b) By May 1, 2023, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, not described in paragraph (a) of this section must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(c) Alternate brake systems may be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

§ 179.202–11 Individual specification requirements.

In addition to § 179.200, the individual specification requirements are as follows:

DOT specification	Insulation	Bursting pressure (psig)	Minimum plate thickness (Inches)	Test pressure (psig)	Bottom outlet
117A100W	Optional	500	9/16	100	Optional.

§ 179.202–12 Performance standard requirements.

(a) *Approval.* Design, testing, and modeling results must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration (FRA), 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) *Approval to operate at 286,000 gross rail load (GRL).* In addition to the requirements of paragraph (a) of this section, a tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). See § 179.13.

(c) *Puncture resistance.* (1) Minimum side impact speed: 12 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(2) Minimum head impact speed: 18 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(d) *Thermal protection systems.* The tank car must be equipped with a thermal protection system. The thermal protection system must be equivalent to the performance standard prescribed in § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(e) *Bottom outlet.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(f) *Top fittings protection.* The tank car tank must be equipped with top fittings protection conforming to AAR Specifications for Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

(g) *ECP brakes.* (1) By January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(2) By May 1, 2023, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, not described in paragraph (g)(1) of this section must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(3) Alternate brake systems may be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

§ 179.202–13 Retrofit standard requirements (DOT–117R).

(a) *Applicability.* Each tank retrofit under these specifications must conform to the general requirements of § 179.200 and the prescriptive standards in § 179.202–13, or the performance standard requirements of § 179.202–12.

(b) *Approval to operate at 286,000 gross rail load (GRL).* A tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). See § 179.13.

(c) *Thickness of plates.* The wall thickness after forming of the tank shell and heads must be, at a minimum, 7/16 of an inch, and constructed with steel authorized by the HMR at the time of construction.

(d) *Tank head puncture resistance system.* The DOT–117R specification tank car must have a tank head puncture resistance system in conformance with § 179.16(c). The full height head shields must have a minimum thickness of ½ inch.

(e) *Thermal protection system.* The DOT–117R specification tank car must have a thermal protection system. The thermal protection system must conform to § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(f) *Jackets.* The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge A1011 steel or equivalent; and flashed around all openings so as to be weather tight. The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protective coating.

(g) *Bottom outlets.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(h) *Top fittings protection.* Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture.

(i) *ECP brakes.* (1) By January 1, 2021, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, comprised of at least one tank car loaded with a Packing Group I material must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(2) By May 1, 2023, each rail carrier operating a high-hazard flammable unit train as defined in § 171.8, not described in paragraph (i)(1) of this section must ensure the train meets the ECP braking capability requirements as prescribed in § 174.310 of this subchapter.

(3) Alternate brake systems may be submitted for approval through the processes and procedures outlined in 49 CFR part 232, subpart F.

Issued in Washington, DC on May 1, 2015, under the authority of 49 U.S.C. 5103(b).

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2015–10670 Filed 5–7–15; 8:45 am]

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G–42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G–8, on Books and Records To Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74860; File No. SR–MSRB–2015–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G–42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G–8, on Books and Records To Be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors

May 4, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2015, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change consisting of proposed new Rule G–42, on duties of non-solicitor municipal advisors, and proposed amendments to Rule G–8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors (the ''proposed rule change''). The MSRB requests that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[3] The Dodd-Frank Act establishes a new federal regulatory regime requiring municipal advisors to register with the SEC, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that authority, is currently developing a comprehensive regulatory framework for municipal advisors. A significant element of that regulatory framework is Proposed Rule G–42, which would establish core standards of conduct for municipal advisors that engage in municipal advisory activities, other than municipal advisory solicitation activities (hereinafter, ''municipal advisors'').[4] Proposed Rule G–42 is accompanied by associated proposed amendments to Rule G–8.

Proposed Rule G–42

Proposed Rule G–42 would establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities. The proposed rule draws on aspects of existing law and regulation under other relevant regulatory regimes, including those applicable to brokers, dealers and municipal securities dealers under MSRB rules and the Exchange Act, investment advisers under the Investment Advisers Act of 1940 [5] (''Investment Advisers Act'') and commodity trading advisors under the Commodity Exchange Act (''CEA'').[6]

In summary, the core provisions of Proposed Rule G–42 would:

- Establish certain standards of conduct consistent with the fiduciary duty owed by a municipal advisor to its municipal entity clients, which includes, without limitation, a duty of care and of loyalty;
- Establish the standard of care owed by a municipal advisor to its obligated person clients;
- Require the full and fair disclosure, in writing, of all material conflicts of interest and legal or disciplinary events that are material to a client's evaluation of a municipal advisor;
- Require the documentation of the municipal advisory relationship, specifying certain aspects of the relationship that must be included in the documentation;
- Require that recommendations made by a municipal advisor are suitable for its clients, or determine the suitability of recommendations made by third parties when appropriate; and
- Specifically prohibit a municipal advisor from engaging in certain activities, including, in summary:
  - Receiving excessive compensation;
  - delivering inaccurate invoices for fees or expenses;
  - making false or misleading representations about the municipal advisor's resources, capacity or knowledge;
  - participating in certain fee-splitting arrangements with underwriters;
  - participating in any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor;
  - making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities, with limited exceptions; and
  - entering into certain principal transactions with the municipal advisor's municipal entity clients.

In addition, the proposed rule change would define key terms used in Proposed Rule G–42 and provide supplementary material. The supplementary material would provide additional guidance on the core concepts in the proposed rule, such as the duty of care, the duty of loyalty, suitability of recommendations and ''Know Your Client'' obligations; provide context for issues such as the scope of an engagement, conflicts of interest disclosures, excessive compensation and the impact of client action that is independent of or contrary to the advice of a municipal advisor, and the applicability of the proposed rule change to 529 college savings plans (''529 plans'') and other municipal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Public Law No. 111–203, 124 Stat. 1376 (2010).

[4] *See* Registration of Municipal Advisors, Rel. No. 34–70462 (Sept. 20, 2013), 78 FR 67467, at 67519, note 679 (Nov. 12, 2013) (''SEC Final Rule'') (recognizing that the regulation of municipal advisors includes the ''application of standards of conduct . . . that may be required by the Commission or the MSRB, and other requirements unique to municipal advisors that may be imposed by the MSRB''). The proposed rule change would not apply to municipal advisors when engaging in the solicitation of a municipal entity or obligated person within the meaning of Exchange Act Section 15B(e)(9) (15 U.S.C. 78*o*-4(e)(9)).

[5] 15 U.S.C. 80b–1 *et seq.*

[6] 7 U.S.C. 1 *et seq.*

entities; provide guidance regarding the definition of ''engage in a principal transaction;'' the continued applicability of state and other laws regarding fiduciary and other duties owed by municipal advisors; and, finally, include information regarding requirements that must be met for a municipal advisor to be relieved of certain provisions of Proposed Rule G–42 in instances when it inadvertently engages in municipal advisory activities.

Standards of Conduct

Section (a) of Proposed Rule G–42 would establish the core standards of conduct and duties applicable to municipal advisors. The approach toward the core standards and duties in Proposed Rule G–42 flows from the distinctions drawn in the Dodd-Frank Act between a municipal advisor's duties owed to clients that are municipal entities and those duties owed to clients that are obligated persons. The Dodd-Frank Act specifically deems a municipal advisor to owe a fiduciary duty to its municipal entity clients.[7] In contrast, the Dodd-Frank Act does not impose a fiduciary duty with respect to a municipal advisor's obligated person clients.[8]

Subsection (a)(i) of Proposed Rule G–42 would provide that each municipal advisor in the conduct of its municipal advisory activities for an obligated person client is subject to a duty of care. Subsection (a)(ii) would provide that each municipal advisor in the conduct of its municipal advisory activities for a municipal entity client is subject to a fiduciary duty, which includes, without limitation, a duty of loyalty and a duty of care. The standards contained in these subsections would not supersede any more restrictive provisions of state or other laws applicable to the activities of municipal advisors.

Proposed supplementary material would provide guidance on the duty of care and the duty of loyalty. Generally, in lieu of providing detailed requirements, the duties would be described in terms that would empower the client to, in large part, determine the scope of services and control the engagement with the municipal advisor (with the municipal advisor's agreement).

Paragraph .01 of the Supplementary Material would describe the duty of care to require, without limitation, a municipal advisor to: (1) Exercise due care in performing its municipal advisory activities; (2) possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice; (3) make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client; and (4) undertake a reasonable investigation to determine that the municipal advisor is not basing any recommendation on materially inaccurate or incomplete information. The duty of care that would be established in section (a) of Proposed Rule G–42, would also require the municipal advisor to have a reasonable basis for: Any advice provided to or on behalf of a client;[9] any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and, any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the advisor is advising.

Paragraph .02 of the Supplementary Material would describe the duty of loyalty to require, without limitation, a municipal advisor, when engaging in municipal advisory activities for a municipal entity, to deal honestly and with the utmost good faith with the client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. Paragraph .02 would also provide that the duty of loyalty would preclude a municipal advisor from engaging in municipal advisory activities with a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

Paragraph .03 of the Supplementary Material would specify that a municipal advisor is not required to disengage from a municipal advisory relationship if a municipal entity client or an obligated person client elects a course of action that is independent of or contrary to advice provided by the municipal advisor.

Paragraph .04 of the Supplementary Material would specify that a municipal advisor could limit the scope of the municipal advisory activities to be performed to certain specified activities or services if requested or expressly consented to by the client, but could not alter the standards of conduct or impose limitations on any of the duties prescribed by Proposed Rule G–42. Paragraph .04 would provide that, if a municipal advisor engages in a course of conduct that is inconsistent with the mutually agreed limitations to the scope of the engagement, it may result in negating the effectiveness of the limitations.

Paragraph .07 of the Supplementary Material would state, as a general matter, that, municipal advisors may be subject to fiduciary or other duties under state or other laws and nothing in Proposed Rule G–42 would supersede any more restrictive provision of state or other laws applicable to municipal advisory activities.

Disclosure of Conflicts of Interest and Other Information

Section (b) of Proposed Rule G–42 would require a municipal advisor to fully and fairly disclose to its client in writing all material conflicts of interest, and to do so prior to or upon engaging in municipal advisory activities. The provision would set forth a non-exhaustive list of scenarios under which a material conflict of interest would arise or be deemed to exist and that would require a municipal advisor to provide written disclosures to its client.

Paragraph (b)(i)(A) would require a municipal advisor to disclose any actual or potential conflicts of interest of which the municipal advisor becomes aware after reasonable inquiry that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the applicable standards of conduct (*i.e.,* a duty of care or a fiduciary duty). Paragraphs (b)(i)(B) through (F) would provide more specific scenarios that give rise to conflicts of interest that would be deemed to be material and require proper disclosure to a municipal advisor's client. Under the proposed rule change, a material

[7] *See* Section 15B(c)(1) of the Exchange Act, 15 U.S.C. 78*o*–4(c)(1) which provides:

A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

[8] *See* SEC Final Rule, 78 FR at 67475, note 100.

[9] The duty of care, which is applicable to all municipal advisory activities, would apply to the provision of comments following the review of any document and the provision of language for use in any document—including an official statement—to the extent that conduct constituted municipal advisory activity. Furthermore, such conduct would be required to comport with the fiduciary duty owed in the case of a municipal entity client.

conflict of interest would always include: any affiliate of the municipal advisor that provides any advice, service or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor; any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client; any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendations to the client of its services, any municipal securities transaction or any municipal financial product; any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client; and any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice. Paragraph (b)(i)(G) would require municipal advisors to disclose any other engagements or relationships of the municipal advisor that could reasonably be anticipated to impair its ability to provide advice to or on behalf of its client in accordance with the applicable standards of conduct established by section (a) of the proposed rule.

Under subsection (b)(i), if a municipal advisor were to conclude, based on the exercise of reasonable diligence, that it had no known material conflicts of interest, the municipal advisor would be required to provide a written statement to the client to that effect.

Subsection (b)(ii) would require disclosure of any legal or disciplinary event that would be material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel. To facilitate the use of existing records, a municipal advisor would be permitted to fulfill this disclosure obligation by identifying the specific type of event and specifically referring the client to the relevant portions of the municipal advisor's most recent SEC Forms MA or MA–I [10] filed with the Commission, if the municipal advisor provides detailed information specifying where the client could access such forms electronically. The requirement to specifically refer to the relevant portions of the forms would not be satisfied by a broad reference to the section of the forms containing such disclosures. Similarly, the specific-information requirement for access to the forms would not be satisfied by a general reference to the SEC's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''). A municipal advisor could alternatively meet this latter requirement, for example, by publishing its most recent forms on its own Web site and then providing the client with the direct web link or internet address.

Paragraph .05 of the Supplementary Material would provide that the required conflicts of interest disclosures must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict and must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.[11] Coupled with its duty to disclose material conflicts of interest, a municipal advisor's obligation to explain how it addresses or intends to manage or mitigate its material conflicts of interest was included in the proposed rule to reflect the Board's intent to eliminate, or at least to expose and reduce the occurrence of, material conflicts of interest that might incline a municipal adviser to provide advice or a recommendation which was not disinterested.[12] If not properly managed or mitigated, material conflicts of interest could lead to a failure to protect a municipal advisor's client's interest, thereby causing a breach of the duty of care and/or loyalty that would be established by proposed section (a).

Paragraph .06 of the Supplementary Material would provide that a municipal advisor that inadvertently engages in municipal advisory activities but does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship [13] would not be required to comply with sections (b) and (c) of Proposed Rule G–42 (relating to disclosure of conflicts of interest and documentation of the relationship), if the municipal advisor takes the prescribed actions listed under paragraph .06 promptly after it discovers its provision of inadvertent advice. The municipal advisor would be required to provide to the client a dated document that would include: a disclaimer stating that the municipal advisor did not intend to provide advice and that, effective immediately, the municipal advisor has ceased engaging in municipal advisory activities with respect to that client in regard to all transactions and municipal financial products as to which advice was inadvertently provided; a notification that the client should be aware that the municipal advisor has not provided the disclosure of material conflicts of interest and other information required under section (b); an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and a request that the municipal entity or obligated person acknowledge receipt of the document. The municipal advisor also would be required to conduct a review of its supervisory and compliance policies and procedures to ensure that they are reasonably designed to prevent inadvertently providing advice to municipal entities and obligated persons. The final sentence of paragraph .06 of the Supplementary Material would also clarify that the satisfaction of the requirements of paragraph .06 would have no effect on the applicability of any provisions of Proposed Rule G–42 other than sections (b) and (c), or any other legal requirements applicable to municipal advisory activities. Such other legal requirements, would include, but would not be limited to, other MSRB rules (including Rule G–23), Financial Industry Regulatory Authority (''FINRA'') rules or federal or state laws that apply to municipal advisory activities.[14]

[10] *See* 17 CFR 249.1300 (SEC Form MA); 17 CFR 249.1310 (SEC Form MA–I).

[11] This requirement is analogous to the requirement of Form ADV (17 CFR 279.1) under the Investment Advisers Act (15 U.S.C. 80b–1 *et seq.*) that obligates an investment adviser to describe how it addresses certain conflicts of interest with its clients. *See, e.g.,* Form ADV, Part 2, Item 5.E.1 of Part 2A (requiring an investment adviser to describe how it will address conflicts of interest that arise in regards to fees and compensation it receives, including the investment adviser's procedures for disclosing the conflicts of interest with its client). *See also,* Form ADV, Part 2A Items 6, 10, 11, 14 and 17.

[12] *See, e.g., SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 191–92 (1963).

[13] Under subsection (f)(vi) of Proposed Rule G–42, a municipal advisory relationship would be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person, and would be deemed to have ended on the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of Proposed Rule G–42 or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

[14] Rule G–23, on activities of financial advisors, generally provides that a dealer that has a financial advisory relationship (as defined by Rule G–23(b)) with respect to the issuance of municipal securities is precluded from acquiring all or any portion of such issue, directly or indirectly, from the issuer as principal, either alone or as a participant in a syndicate or other similar account formed for that purpose. A dealer is also, under Rule G–23, precluded from arranging the placement of an issue with respect to which it has a financial advisory relationship.

Documentation of the Municipal Advisory Relationship

Section (c) of Proposed Rule G–42 would require each municipal advisor to evidence each of its municipal advisory relationships by a writing, or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The documentation would be required to be dated and include, at a minimum: [15]

- the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed, as provided in proposed subsection (c)(i);
- the information required to be disclosed in proposed section (b), including the disclosures of conflicts of interest, as provided in proposed subsection (c)(ii);
- a description of the specific type of information regarding legal and disciplinary events requested by the Commission on SEC Form MA and SEC Form MA–I, as provided in proposed subsection (c)(iii), and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA–I filed with the Commission; [16]
- the date of the last material change to the legal or disciplinary event disclosures on any SEC Forms MA or MA–I filed with the Commission by the municipal advisor, as provided in proposed subsection (c)(iv);
- the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement, as provided in proposed subsection (c)(v);
- the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none, as provided in proposed subsection (c)(vi); and
- any terms relating to withdrawal from the municipal advisory relationship, as provided in proposed subsection (c)(vii).

Proposed Rule G–42(c) also would require municipal advisors to promptly amend or supplement the writing(s) during the term of the municipal advisory relationship as necessary to reflect any material changes or additions in the required information. For example, if the basis of compensation or scope of services materially changed during the term of the relationship, the municipal advisor would be required to amend or supplement the writing(s) and promptly deliver the amended writing(s) or supplement to the client. The same would be true in the case of material conflicts of interest discovered after the relationship documentation was last provided to the client. The amendment and supplementation requirement in proposed section (c) would apply to any material changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. Any amendments or supplementation also would be subject to the requirements of the proposed rule change that would apply as if it were the first relationship documentation provided to the client.

Proposed Rule G–42(c) is modeled in part on Rule G–23, which requires a broker, dealer or municipal securities dealer (''dealer'') that enters into a financial advisory relationship with an issuer to evidence that relationship in writing prior to, upon or promptly after the inception of that relationship. Like Rule G–23, proposed section (c) would not require that the writing(s) evidencing the relationship be a bilateral agreement or contract. For example, if state law provided for the procurement of municipal advisory services in a manner that did not require a writing sufficient to establish a bilateral agreement, a municipal advisor could send its client a writing, such as a letter that references the procurement document and contains the terms and disclosures required by proposed Rule G–42(b) and (c) to evidence its municipal advisory relationship with its municipal entity or obligated person client.

Recommendations and Review of Recommendations of Other Parties

Section (d) of Proposed Rule G–42 would provide that a municipal advisor must not recommend that its client enter into any municipal securities transaction or municipal financial product unless the municipal advisor has determined, based on the information obtained through the reasonable diligence of the municipal advisor, whether the transaction or product is suitable for the client.[17] Proposed section (d) also contemplates that a municipal advisor may be requested by the client to review and determine the suitability of a recommendation made by a third party to the client. If a client were to request this type of review, and such review were within the scope of the engagement, the municipal advisor's determination regarding the suitability of the third-party's recommendation regarding a municipal securities transaction or municipal financial product would be subject to the same reasonable diligence standard—requiring the municipal advisor to obtain relevant information through the exercise of reasonable diligence.

As to both types of review, the municipal advisor would be required under proposed section (d) to inform its municipal entity or obligated person client of its evaluation of the material risks, potential benefits, structure and other characteristics of the recommended municipal securities transaction or municipal financial product; the basis upon which the advisor reasonably believes the recommended transaction or product is, or is not, suitable for the client; and whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives. The proposed rule does not include requirements regarding how such information must be communicated by the municipal advisor to the client, and a municipal advisor would be permitted to choose the appropriate method by which to communicate the information

[15] While no acknowledgement from the client of its receipt of the documentation would be required, a municipal advisor must, as part of the duty of care it owes its client, reasonably believe that the documentation was received by its client.

[16] Compliance with this requirement could be achieved in the same manner, and (so long as done upon or prior to engaging in municipal advisory activities for the client) concurrently with providing to the client the information required under proposed subsection (b)(ii). However, the description of the events contained in Forms MA or MA–I must be sufficiently specific to allow a municipal entity or obligated person client to understand the nature of any disclosed legal or disciplinary event. In addition, the municipal advisor must provide detailed information specifying where the client could access such forms electronically. *See supra* note 10 and accompanying text.

[17] Some securities market participants are required to make only recommendations that are ''consistent with'' their customer's best interests. (*See* FINRA Notice 12–25, Suitability (May 2012)). As provided in proposed section (a) and paragraph .02 of the Supplementary Material to Proposed Rule G–42, a municipal advisor to a municipal entity client owes the client a fiduciary duty that includes a duty of loyalty in addition to the duty of care, which requires the municipal advisor to deal honestly and with the utmost good faith with the municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor's recommendations of municipal securities transactions and municipal financial products to a municipal entity client, as is the case with all municipal advisory activities performed for a municipal entity client, must comport with the municipal advisor's fiduciary duty and particularly its duty of loyalty. The MSRB considers the duty of loyalty described in Proposed Rule G–42 to be even more rigorous than a standard requiring consistency with a client's best interests.

to its client so long as it comports with the duty of care owed.

Section (d), like other provisions of Proposed Rule G–42, would reflect the basic principle that the client controls the scope of the engagement with its municipal advisor (with the agreement of the municipal advisor). For example, a municipal advisor's engagement may be limited in scope because the municipal advisor's client already reached a decision regarding a particular municipal securities transaction or municipal financial product, or engaged another professional to undertake certain duties in connection with a municipal securities transaction or municipal financial product. Paragraph .04 of the Supplementary Material would provide that a municipal advisor and its client could limit the scope of the municipal advisory relationship to certain specified activities or services. A municipal advisor, however, would not be permitted to alter the standards of conduct or duties imposed by the proposed rule with respect to that limited scope.

The proposed rule change would adopt, and apply to municipal advisors, the existing MSRB interpretive guidance regarding the general principles currently applicable to dealers for determining whether a particular communication constitutes a recommendation of a securities transaction.[18] Consistent with the approach in the case of dealers, a municipal advisor's communication to its client that could reasonably be viewed as a ''call to action'' to engage in a municipal securities transaction or enter into a municipal financial product would be considered a recommendation and obligate the municipal advisor to conduct a suitability analysis of its recommendation. Depending on all of the facts and circumstances, communications by a municipal advisor to a client that concern minor or ancillary matters that relate to, but are not recommendations of, a municipal securities transaction or municipal financial product might constitute advice (and therefore trigger many other provisions of the proposed rule) but would not trigger the suitability obligation set forth in proposed section (d).

Paragraph .08 of the Supplementary Material would provide guidance related to a municipal advisor's suitability obligations. Under this provision, a municipal advisor's determination of whether a municipal securities transaction or municipal financial product is suitable for its client must be based on numerous factors, as applicable to the particular type of client, including, but not limited to: the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued are reasonably expected to be outstanding, and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after the municipal advisor has conducted a reasonable inquiry.

In connection with a municipal advisor's obligation to determine the suitability of a municipal securities transaction or a municipal financial product for a client, which should take into account its knowledge of the client, paragraph .09 of the Supplementary Material would require a municipal advisor to know its client. The obligation to know the client would require a municipal advisor to use reasonable diligence to know and retain essential facts concerning the client and the authority of each person acting on behalf of the client, and is similar to requirements in other regulatory regimes.[19] The facts ''essential'' to knowing one's client would include those required to effectively service the municipal advisory relationship with the client; act in accordance with any special directions from the client; understand the authority of each person acting on behalf of the client; and comply with applicable laws, rules and regulations.

As a practical matter, it is understood that a client could at times elect a course of action either independent of or contrary to the advice of its municipal advisor. Paragraph .03 of the Supplementary Material would provide that the municipal advisor would not be required to disengage from the municipal advisory relationship on that basis.

Specified Prohibitions

Subsection (e)(i) of Proposed Rule G–42 would prohibit discrete conduct or activities that would conflict, or would be highly likely to conflict, with the core standards of conduct—the duty of loyalty and the duty of care—applicable to municipal advisors under Proposed Rule G–42 and the Exchange Act.

Paragraph (e)(i)(A) would prohibit a municipal advisor from receiving compensation from its client that is excessive in relation to the municipal advisory activities actually performed for the client. Paragraph .10 of the Supplementary Material would provide additional guidance on how compensation would be determined to be excessive. Included in paragraph .10 are several factors that would be considered when evaluating the reasonableness of a municipal advisor's compensation relative to the nature of the municipal advisory activities performed, including, but not limited to: the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

Paragraph (e)(i)(B) would prohibit municipal advisors from delivering an invoice for fees or expenses for municipal advisory activities that does not accurately reflect the activities actually performed or the personnel that actually performed those activities. This provision would not prohibit a municipal advisor from including a discount for the services it actually performed, if accurately disclosed.

Paragraph (e)(i)(C) would prohibit a municipal advisor from making any representation or submitting any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact, about its capacity, resources or knowledge in response to requests for proposals or in oral presentations to a client or prospective client for the purpose of obtaining or retaining an

[18] *See* MSRB Rule G–19. *See also* MSRB Notice 2002–30 (Sept. 25, 2002) Notice Regarding Application of Rule G–19, on Suitability of Recommendations and Transactions, to Online Communications.

[19] Similar requirements apply to brokers and dealers under FINRA Rule 2090 (Know Your Customer) and swap dealers under Commodity Futures Trading Commission (''CFTC'') Rule 402(b) (General Provisions: Know Your Counterparty), 17 CFR 23.402(b), found in CFTC Rules, Ch. I, Pt. 23, Subpt. H (Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, including Special Entities) (17 CFR 23.400 *et. seq.*). Notably, the CFTC's rule applies to dealings with special entity clients, defined to include states, state agencies, cities, counties, municipalities, other political subdivisions of a State, or any instrumentality, department, or a corporation of or established by a State or political subdivision of a State. *See* CFTC Rule 401(c) (defining ''special entity'') (17 CFR 23.401(c)).

engagement to perform municipal advisory activities. Note that, additionally, the MSRB's existing fundamental fair practice rule, Rule G–17, precludes municipal advisors, in the conduct of their municipal advisory activities, from engaging in any deceptive, dishonest or unfair practice with any person.

Paragraph (e)(i)(D) would prohibit municipal advisors from making or participating in two types of fee-splitting arrangements: (1) Any fee-splitting arrangement with an underwriter on any municipal securities transaction as to which the municipal advisor has provided or is providing advice; and (2) any *undisclosed* fee-splitting arrangement with providers of investments or services to a municipal entity or obligated person client of the municipal advisor.

Paragraph (e)(i)(E) would, generally, prohibit a municipal advisor from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities. However, the provision contains three exceptions. The prohibition would not apply to: (1) Payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and MSRB for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible ''normal business dealings'' as described in MSRB Rule G–20. The proposed rule change, however, would not prescribe parameters that would effectively limit a client's ability to decide the source of funds for the payment of fees for services rendered by the municipal advisor.

Principal Transactions

Subsection (e)(ii) of Proposed Rule G–42 would prohibit a municipal advisor to a municipal entity, and any affiliate of such municipal advisor, from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice. The ban on principal transactions would apply only with respect to clients that are municipal entities. The ban would not apply to principal transactions between a municipal advisor (or an affiliate of the municipal advisor) and the municipal advisor's obligated person clients. Although such transactions would not be prohibited, importantly, all municipal advisors, including those engaging in municipal advisory activities for obligated person clients, are currently subject to the MSRB's fundamental fair-practice rule, Rule G–17.

Paragraph .07 of the Supplementary Material would provide an exception to the ban on principal transactions in subsection (e)(ii) in order to avoid a possible conflict with existing MSRB Rule G–23, on activities of financial advisors. Specifically, the ban in subsection (e)(ii) would not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance, because such a transaction is the type of transaction that is addressed, and, in certain circumstances, prohibited by Rule G–23. The purpose of this provision would be to avoid a potential conflict in MSRB rules and provide, until such time as the MSRB may further review and potentially amend Rule G–23, that the specific prohibition against principal transactions contained in subsection (e)(ii) would not prohibit such underwriting transactions, as they are already addressed and prohibited in certain circumstances by Rule G–23.

For purposes of the prohibition in proposed subsection (e)(ii), subsection (f)(i) would define the term ''engaging in a principal transaction'' to mean ''when acting as a principal for one's own account, selling to or purchasing from the municipal entity client any security or entering into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.'' This definition draws on the statutory language regarding principal transactions in the Investment Advisers Act.[20] Among other things, the definition was designed to exclude transactions thought to be potentially covered by some commenters, such as the taking of a cash deposit or the payment by a client solely for professional services. Further, paragraph .11 of the Supplementary Material would clarify that the term ''other similar financial products,'' as used in subsection (f)(i), would include a bank loan but only if it is in an aggregate principal amount of $1,000,000 or more and is economically equivalent to the purchase of one or more municipal securities. Bank loans would be included under the specified circumstances because, as a matter of market practice, they serve as a financing alternative to the issuance of municipal securities and pose a comparable, acute potential for self-dealing and other breaches of the fiduciary duty owed by a municipal advisor to a municipal entity client.

Definitions

Section (f) of Proposed Rule G–42 would provide definitions of the terms ''engaging in a principal transaction,'' ''affiliate of the municipal advisor,'' [21] ''municipal advisory relationship,'' [22] and ''official statement.'' [23] Further, for several terms in Proposed Rule G–42 that have been previously defined by federal statute or SEC rules, proposed section (f) would, for purposes of Proposed Rule G–42, adopt the same meanings. These terms would include ''advice;'' [24] ''municipal advisor;'' [25] ''municipal advisory activities;'' [26]

[20] *See* 15 U.S.C. 80b–6(3).

[21] ''Affiliate of the municipal advisor'' would mean ''any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.'' *See* Proposed Rule G–42(f)(iii).

[22] Proposed Rule G–42(f)(vi) provides that a ''municipal advisory relationship'' would be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

[23] ''Official statement'' would have the same meaning as in MSRB Rule G–32(d)(vii). *See* Proposed Rule G–42(f)(ix).

[24] ''Advice'' would have the same meaning as in Section 15B(e)(4)(A)(i) of the Exchange Act (15 U.S.C. 78*o*–4(e)(4)(A)(i)); SEC Rule 15Ba1–1(d)(1)(ii) (17 CFR 240.15Ba1–1(d)(1)(ii)); and other rules and regulations thereunder. *See* Proposed Rule G–42(f)(ii).

[25] ''Municipal advisor'' would have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1–1(d)(1)–(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

See Proposed Rule G–42(f)(iv).

[26] ''Municipal advisory activities'' would mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) (definition of ''municipal advisor'') of Proposed Rule G–42. *See* Proposed Rule G–42(f)(v).

''municipal entity;'' [27] and ''obligated person.'' [28]

Applicability of Proposed Rule G–42 to 529 College Savings Plans and Other Municipal Fund Securities

The regulation of municipal advisors, as the SEC has recognized,[29] is relevant to municipal fund securities.[30] Paragraph .12 of the Supplementary Material emphasizes the proposed rule's application to municipal advisors whose municipal advisory clients are sponsors or trustees of municipal fund securities.

Proposed Amendments to Rule G–8

The proposed amendments to Rule G–8 would require each municipal advisor to make and keep any document created by the municipal advisor that was material to its review of a recommendation by another party or that memorialize its basis for any conclusions as to suitability.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act [31] provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act [32] provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

Section 15B(b)(2)(L)(i) of the Exchange Act [33] requires, with respect to municipal advisors, the Board to adopt rules to prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients.

The MSRB believes that, the proposed rule change is consistent with Sections 15B(b)(2),[34] 15B(b)(2)(C) [35] and 15B(b)(2)(L)(i) [36] of the Exchange Act because it will enhance the protections afforded to municipal bond issuers and investors by providing guidance to municipal advisors that is designed to promote compliance with the standards of conduct, requirements and intent of the Dodd-Frank Act.

In this regard, neither the Dodd-Frank Act nor the recently-adopted SEC Final Rule prescribe the duties and obligations of municipal advisors beyond a general statement that municipal advisors shall be deemed to have a fiduciary duty to any municipal entity for whom the municipal advisor acts as a municipal advisor. Adoption of Proposed Rule G–42 will fulfill the need for regulatory guidance with respect to the standards of conduct and duties of municipal advisors and the prevention of breaches of a municipal advisor's fiduciary duty to its municipal entity clients. Proposed Rule G–42 also will establish standards of conduct and duties for municipal advisors when engaging in municipal advisory activities for obligated persons and provide guidance to these municipal advisors as to what conduct would satisfy these duties and obligations.

The MSRB believes that by articulating specific standards of conduct and duties for municipal advisors, Proposed Rule G–42 will assist municipal advisors in complying with the statutorily-imposed requirements of the Dodd-Frank Act, and help prevent failures to meet those requirements. The proposed rule change will aid municipal entities and obligated persons that choose to engage municipal advisors in connection with their issuances of municipal securities as well as transactions in municipal financial products by promoting higher ethical and professional standards of such municipal advisors. The MSRB also believes that articulating standards of conduct and duties of municipal advisors will enhance the ability of the MSRB and other regulators to oversee the conduct of municipal advisors, as contemplated by the Dodd-Frank Act.

The MSRB believes the proposed rule change will enhance municipal entity and obligated person protections by ensuring that these entities have access to sufficient information to make meaningful choices, based on the merits of the municipal advisor, when considering engaging a municipal advisor by requiring municipal advisors to provide detailed disclosures of material conflicts of interest and certain other information prior to or upon the establishment of the municipal advisory relationship. As a result, municipal advisor clients will be able to evaluate municipal advisors on this objective set of information. These protections will also be enhanced as a result of the proposed rule change's guidance for municipal advisors that could assist advisors in complying with, or help prevent breaches of, their fiduciary duty and duty of care, as well as other applicable obligations such as the duty of fair dealing (which is owed under MSRB Rule G–17 by all municipal advisors to all persons). To the extent that this guidance, provided in the supplementary material in the proposed rule change, would increase the likelihood of compliance by municipal advisors, municipal entities and obligated persons will benefit. Investors in municipal bond offerings will also benefit from the proposed rule change to the extent that a municipal entity or obligated person issuing bonds that uses a municipal advisor is more likely to receive services that reflect a higher ethical and professional standard than otherwise would be the case.

The proposed rule change would also, to some extent, prescribe means for municipal advisors to help prevent breaches of these duties, which would include, among others: Requirements for the information that must be included in the documentation of the municipal advisory relationship; specified activities (such as certain principal transactions) that would be explicitly prohibited; and disclosure requirements that must accompany a municipal advisor's recommendation regarding a municipal security or a municipal financial product.

Section 15B(b)(2)(L)(iv) of the Exchange Act [37] requires that rules adopted by the Board:

[27] ''Municipal entity'' would ''have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1–1(g) and other rules and regulations thereunder.'' *See* Proposed Rule G–42(f)(vii).

[28] ''Obligated person'' would ''have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1–1(k) and other rules and regulations thereunder.'' *See* Proposed Rule G–42(f)(viii).

[29] *See* SEC Final Rule, 78 FR at 67472–3.

[30] ''Municipal fund security'' is defined in MSRB Rule D–12 to mean ''a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.'' The term refers to, among other things, interests in governmentally sponsored 529 college savings plans and local government investment pools.

[31] 15 U.S.C. 78*o*–4(b)(2).

[32] 15 U.S.C. 78*o*–4(b)(2)(C).

[33] 15 U.S.C. 78*o*–4(b)(2)(L)(i).

[34] 15 U.S.C. 78*o*–4(b)(2).

[35] 15 U.S.C. 78*o*–4(b)(2)(C).

[36] 15 U.S.C. 78*o*–4(b)(2)(L)(i).

[37] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act [38] because the proposed rule change would impose on all municipal advisors, including small municipal advisors, only the necessary and appropriate regulatory burdens needed to promote compliance with the proposed rule change. To accomplish this, Proposed Rule G–42 would use both a principles and prescriptive-based approach to establish the core standards of conduct in order to, among other things, accommodate the diversity of the municipal advisor population, including small municipal advisors and sole proprietorships, and to provide uniform protections to its clients, investors and the public.

The MSRB recognizes that municipal advisors would incur costs to meet the standards of conduct and duties contained in the proposed rule changes. These costs also could include additional compliance and recordkeeping costs. To ensure compliance with the disclosure obligations of the proposed rule change, municipal advisors could incur costs by seeking advice from legal and compliance professionals when preparing disclosures to clients. However, the MSRB believes that some of these costs are accounted for in the SEC Final Rule which requires disclosure of at least some similar information, such as the disclosure of disciplinary events. Proposed Rule G–42 could also impose additional costs on municipal advisors by requiring the disclosure of additional information directly to clients, some of which must already be submitted to the SEC on SEC Forms MA [39] and MA–I.[40] The MSRB has considered these costs and that there could be some instances of duplicative disclosure, but believes that the overlap in disclosure requirements between the SEC and MSRB will be minimal and that the disclosure requirements of the proposed rule are important elements of Proposed Rule G–42 that protect municipal advisor clients and foster transparency in the municipal advisory marketplace.

As to the potential costs associated with additional recordkeeping requirements, the SEC recognized in its economic analysis [41] of its recordkeeping requirements that municipal advisors should already be maintaining books and records as part of their day-to-day operations. In addition, municipal advisors who are also registered as broker-dealers or investment advisers are currently subject to the recordkeeping requirements of those regulatory frameworks. Against this back-drop, the MSRB believes that the costs associated with the few additional recordkeeping requirements associated with Proposed Rule G–42 will not be significant.

The MSRB believes that any increase in municipal advisory fees attributable to the additional costs of the proposed rule change will be minimal and that at least the element of fixed costs per municipal advisory firm will be spread across the number of advisory engagements for each firm. The MSRB recognizes, however, that for smaller municipal advisors with fewer clients, the cost of compliance with the proposed rule change's standards of conduct and duties could represent a greater percentage of annual revenues, and, thus, such advisors could be more likely to pass those costs along to their advisory clients.

The MSRB also recognizes that, as a result of these costs, some municipal advisors could decide to exit the market, curtail their activities, consolidate with other firms, or pass the costs on to municipal entities and obligated persons in the form of higher fees. The MSRB believes, however, that by articulating the core standard of conduct and duties and obligations of municipal advisors and by prescribing means that would prevent breaches of these duties, the proposed rule change will reduce possible confusion and uncertainty about what is required in order to comply with relevant provisions of the Dodd-Frank Act. Therefore, the proposed rule change likely will reduce certain costs of compliance that might have otherwise been incurred by allowing municipal advisors to more quickly and accurately determine compliance requirements.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Exchange Act,[42] which provides that the MSRB's rules shall:

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would require, under the proposed amendments to Rule G–8, that a municipal advisor make and keep records of any document created by the municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any conclusions as to suitability. The MSRB believes that the proposed amendments to Rule G–8 related to recordkeeping (with the ensuing application of existing Rule G–9 on records preservation) would promote compliance and facilitate enforcement of Proposed Rule G–42, other MSRB rules, and other applicable securities laws and regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) [43] of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) [44] of the Exchange Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.[45] In accordance with this policy, the Board evaluated the potential impacts of the proposed rule, including in comparison to reasonable alternative regulatory approaches, relative to the baseline that, *inter alia,* deemed municipal advisors to owe a fiduciary duty to their municipal entity clients and established a registration requirement. Based on this evaluation, the MSRB does not believe that the proposed rule change would impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rule may also provide a range of benefits to municipal entities, investors and municipal advisors. Municipal entities and obligated persons will have access to more information about municipal advisors

[38] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[39] 17 CFR 249.1300.

[40] 17 CFR 249.1310.

[41] *See* SEC Final Rule, 78 FR at 67619.

[42] 15 U.S.C. 78*o*–4(b)(2)(G).

[43] 15 U.S.C. 78*o*–4(b)(2)(C).

[44] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[45] Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://www.msrb.org/About-MSRB/Financial-and-Other-Information/Financial-Policies/Economic-Analysis-Policy.aspx*.

and can make better, more informed choices with lower search costs. The availability of additional, objective information and the fostering of merit-based competition among municipal advisors should lead to enhanced issuer protections and improved outcomes. These improvements likely would enhance investor confidence in the integrity of the market. Moreover, the MSRB believes that the proposed rule change will provide a benefit to municipal advisors who could otherwise face greater uncertainty about the standards of conduct and duties required to meet certain of the requirements of the Dodd-Frank Act.

The MSRB considered whether costs associated with the proposed rule change, relative to the baseline, could affect the competitive landscape by leading some municipal advisors to exit the market, curtail their activities, consolidate with other firms, or pass costs on to municipal entity and obligated person clients in the form of higher fees. In addition, the MSRB considered whether the costs associated with the proposed rule, relative to the baseline, could create barriers to entry for firms wishing to offer to engage in municipal advisory activities.

The MSRB recognizes that some municipal advisors may exit the market as a result of the costs associated with the proposed rule relative to the baseline. However, the MSRB believes municipal advisors may exit the market for a number of reasons other than costs associated with the proposed rule. The MSRB also recognizes that some municipal advisors may consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the proposed rule. Finally, the MSRB acknowledges that some potential market entrants may be discouraged from entering the market because of costs or because the requirement to disclose information such as disciplinary events might make attracting business more difficult.

It is also possible that competition for municipal advisory activities may be affected by whether incremental costs associated with requirements of the proposed rule are passed on to advisory clients. The amount of costs passed on may be influenced by the size of the municipal advisory firm. For smaller municipal advisors with fewer clients, the incremental costs associated with the requirements of the proposed rule may represent a greater percentage of annual revenues, and, thus, such advisors may be more likely to pass those costs along to their advisory clients. As a result, the competitive landscape may be altered by the potentially impaired ability of smaller firms to compete for advisory clients.

In addition to the factors noted above that may affect smaller advisory firms, the MSRB understands that some small municipal advisors and sole proprietors may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule may be proportionally higher for these smaller firms.

The MSRB believes these costs represent only those necessary to achieve the purposes of the Exchange Act. Relative to draft Rule G–42 as initially published for comment,[46] the MSRB has made efforts to minimize costs that could affect the competitive landscape including, narrowing the scope of the conflicts that must be disclosed, specifying a less burdensome method for disclosing conflicts and disciplinary actions and documenting the municipal advisory relationship, clarifying the obligations owed by municipal advisors to obligated persons, and removing a number of other previously considered requirements.

Further, while exit, consolidation, or a reduced number of new market entrants may lead to a reduced pool of municipal advisors, the SEC concluded in the SEC Final Rule (on the permanent registration of municipal advisors) that the market would be likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), consolidation of municipal advisors, or lack of new entrants into the market.[47]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB solicited comment on the proposed rule change in the First Request for Comment, requesting comment on a draft of Rule G–42 and draft amendments to Rules G–8 and G–9, and a second notice requesting comment on a revised draft of Rule G–42 and draft amendments to Rules G–8 and G–9.[48]

The MSRB received forty-six comment letters in response to the First Request for Comment,[49] and nineteen

[46] The MSRB sought comment on the initial draft Rule G–42 (''Initial Draft Rule'') and draft amendments to Rules G–8 and G–9 in MSRB Notice 2014–01 (Jan. 9, 2014) (''First Request for Comment'').

[47] *See* SEC Final Rule, 78 FR at 67608.

[48] *See* MSRB Notice 2014–12 (Jul. 23, 2014) (''Second Request for Comment''). The draft rule text published in the Second Request for Comment is hereinafter the ''Revised Draft Rule.''

[49] Comments were received in response to the First Request for Comment from: Acacia Financial Group, Inc.: Letter from Kim M. Whelan, Co-President, dated March 10, 2014 (''Acacia''); American Bankers Association: Letter from Cristeena G. Naser, Vice President and Senior Counsel, dated March 4, 2014 (''ABA''); American Council of Engineering Companies: Letter from David A. Raymond, President and CEO, dated March 7, 2014 (''ACEC''); American Public Transportation Association: Letter from Michael P. Melaniphy, President and CEO, dated March 10, 2014 (''APTA''); Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated March 10, 2014 (''BDA''); Cape Cod Five Cents Savings Bank: Letter from Dorothy A. Savarese, President and Chief Executive Officer, dated March 10, 2014 (''Cape Cod Savings''); Chancellor Financial Associates: Email from William J. Caraway, President, dated January 14, 2014 (''Chancellor Financial''); Coastal Securities: Letter from Chris Melton, Executive Vice President, dated March 10, 2014 (''Coastal''); College Savings Foundation: Letter from Mary G. Morris, Chair, dated March 10, 2014 (''CSF''); College Savings Plans Network: Letter from Betty Everitt Lochner, Director, Guaranteed Education Tuition Program, dated March 10, 2014 (''CSPN''); Cooperman Associates: Letter from Joshua G. Cooperman dated March 10, 2014 (''Cooperman''); Erika Miller: Email dated February 4, 2015; FCS Group: Letter from Taree Bollinger, Vice President, dated March 17, 2014 (''FCS''); First River Advisory L.L.C.: Letter from Shelley J. Aronson, President, dated January 16, 2014 (''First River Advisory''); First Southwest Company: Letter from Hill A. Feinberg, Chairman and Chief Executive Officer, and Michael G. Bartolotta, Vice Chairman, dated March 7, 2014 (''First Southwest''); Frost Bank: Letter from William H. Sirakos, Senior Executive Vice President, dated March 10, 2014 (''Frost''); George K. Baum & Company: Letter from Guy E. Yandel, EVP and Head of Public Finance, Dana L. Bjornson, EVP, CFO and Chief Compliance Officer, and Andrew F. Sears, SVP and General Counsel, dated March 10, 2014 (''GKB''); Government Finance Officers Association: Letter from Dustin McDonald, Director, Federal Liaison Center, dated March 13, 2014 (''GFOA''); Government Investment Officers Association: Letter from Laura Glenn, President, *et al.,* dated March 7, 2014 (''GIOA''); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated March 4, 2014 (''ICI''); J.P. Morgan: Letter from Paul N. Palmeri, Managing Director, dated March 10, 2014 (''JP Morgan''); Kutak Rock LLP: Letter from John J. Wagner dated March 10, 2014 (''Kutak''); Lamont Financial Services Corporation: Letter from Robert A. Lamb, President, dated March 10, 2014 (''Lamont''); Lewis Young Robertson & Burningham, Inc.: Letter from Laura D. Lewis, Principal, dated March 3, 2014 (''Lewis Young''); MSA Professional Services, Inc.: Letter from Gilbert A. Hantzsch, CEO, dated March 10, 2014 (''MSA''); National Association of Bond Lawyers: Letter from Allen K. Robertson, President, dated March 18, 2014 (''NABL''); National Association of Health and Educational Facilities Finance Authorities: Letter from Pamela Lenane, President, David J. Kates, Chapman and Cutler LLP, and Charles A. Samuels, Mintz Levin, dated March 10, 2014 (''NAHEFFA''); National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated March 10, 2014 (''NAIPFA''); National Healthcare Capital LLC: Letter from Richard Plumstead, dated March 10, 2014; New York State Bar Association: Letter from Peter W. LaVigne, Chair of the Committee, dated March 12, 2014 (''NY State Bar''); Northland Securities, Inc.: Letter from John R. Fifield, Jr., Director of Public Finance/Senior Vice President, dated March 7, 2014 (''Northland''); Oppenheimer & Co. Inc.: Email from John Rodstrom dated March

comment letters in response to the Second Request for Comment.[50] The comments are summarized below by topic and MSRB responses are provided.[51]

10, 2014 (''Oppenheimer''); Parsons Brinckerhoff Advisory Services, Inc.: Letter from Mark E. Briggs, President, dated March 10, 2014 (''Parsons''); Piper Jaffray: Letter from Frank Fairman, Managing Director, Head of Public Finance Services, dated March 10, 2014 (''Piper Jaffray''); Public Financial Management, Inc.: Letter from John H. Bonow, Chief Executive Officer, dated March 10, 2014 (''PFM''); Public Resources Advisory Group: Letter from Thomas Huestis dated March 10, 2014 (''PRAG''); Raftelis Financial Consultants, Inc.: Letter from Lex Warmath dated March 10, 2014 (''Raftelis Financial''); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 10, 2014 (''SIFMA''); Sutherland Asbill & Brennan LLP: Letter from Michael B. Koffler dated March 10, 2014 (''Sutherland''); Wells Fargo Advisors, LLC: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated March 10, 2014 (''Wells Fargo''); Winters & Co. Advisors, LLC: Letter from Christopher J. Winters dated March 10, 2014 (''Winters LLC''); WM Financial Strategies: Letter from Joy A. Howard, Principal, dated March 10, 2014 (''WM Financial''); Woodcock & Associates, Inc.: Email from Christopher Woodcock dated January 14, 2014 (''Woodcock''); Wulff, Hansen & Co.: Letter from Chris Charles, President, dated March 17, 2014 (''Wulff Hansen''); Yuba Group: Letter from Linda Fan, Managing Partner, dated March 7, 2014 (''Yuba''); Zion's First National Bank: Letter from W. David Hemingway, Executive Vice President, dated March 10, 2014 (''Zion'').

[50] Comments were received in response to the Second Request for Comment from: ABA: Letter from Cristeena Naser, Vice President, Center for Securities, Trust & Investments, dated August 25, 2014; ACEC: Letter from David A. Raymond, President and CEO, dated August 25, 2014; BDA: Letter from Michael Nicholas, Chief Executive Officer, dated August 25, 2014; Columbia Capital Management, LLC: Letter from Jeff White, Principal, dated August 25, 2014 (''Columbia Capital''); Dave A. Sanchez: Letter dated August 25, 2014 (''Sanchez''); Financial Services Roundtable: Letter from Richard Foster, Vice President and Senior Counsel for Regulatory and Legal Affairs, dated August 25, 2014 (''FSR''); Florida Division of Bond Finance: Letter from J. Ben Watkins III, Director, dated August 22, 2014 (''FLA DBF''); GFOA: Letter from Dustin McDonald, Director, Federal Liaison Center, dated September 2, 2014; ICI: Letter from Tamara K. Salmon, Senior Associate Counsel, dated August 19, 2014; Mr. Bart Leary: Email dated July 23, 2014 (''Leary''); Lewis Young: Letter from Laura D. Lewis, Principal, dated August 25, 2014; NAIPFA: Letter from Jeanine Rodgers Caruso, President, dated August 25, 2014; New York State Bar: Letter from Peter W. LaVigne, Chair of the Committee, dated August 27, 2014; Piper Jaffray: Letter from Frank Fairman, Managing Director, Head of Public Finance Services, dated August 25, 2014; SIFMA: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated August 25, 2014; Southern Municipal Advisors, Inc.: Letter from Michael C. Cawley, Senior Consultant, dated August 25, 2014 (''SMA''); Wells Fargo: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated August 25, 2014; WM Financial: Letter from Joy A. Howard, Principal, dated August 25, 2014; and Zion: Letter from W. David Hemingway, Executive Vice President, dated August 25, 2014.

[51] The draft rule text included in the First Request for Comment is referred to herein as the ''Initial Draft Rule;'' the draft rule text included in the Second Request for Comment is referred to herein as the ''Revised Draft Rule.''

Standards of Conduct

Under Proposed Rule G–42(a), a municipal advisor would be subject to a duty of care as to its obligated person clients under subsection (a)(i) and a fiduciary duty as to its municipal entity clients under subsection (a)(ii) when engaging in municipal advisory activities for such clients. Several commenters raised concerns relating to the proposed standards of conduct that would apply to municipal advisors.

Scope of the Fiduciary Relationship

In the First Request for Comment, the MSRB proposed that a municipal advisor be subject to a fiduciary duty when engaging in municipal advisory activities for municipal entity clients. Subsequently, in the Second Request for Comment, the MSRB asked whether the Revised Draft Rule should uniformly apply the proposed fiduciary standard to a municipal advisor in its relationships with all of its clients, including obligated persons. A number of commenters opposed extending the application of the fiduciary standard to municipal advisors in connection with their obligated person clients.[52]

The MSRB believes that the application of the fiduciary standard is appropriately limited to municipal advisors when engaging in municipal advisory activities for or on behalf of municipal entity clients and strikes the appropriate balance. Proposed Rule G–42 establishes a minimum standard, which, as noted by NABL, does not limit an obligated person client and its municipal advisor from agreeing to a higher standard of conduct, or incorporating other requirements or protections in the municipal advisory relationship.

Scope of the Duty/529 Plans

Proposed paragraph .01 of the Supplementary Material provides that a municipal advisor acting in accordance with the duty of care must undertake reasonable investigation to determine that it is not basing any recommendation made to a client on materially inaccurate or incomplete information. In response to the First and Second Request for Comment, ICI stated that municipal advisors to 529 college savings plans (''529 plans'') should not be required to verify the veracity or completeness of the information provided to the municipal advisor by authorized state employees or officials who are authorized to act on behalf of the 529 plan. ICI requested that paragraph .01 of the Supplementary Material be revised not to require municipal advisors to investigate whether information is materially inaccurate or incomplete when it is provided to the municipal advisor by persons who are authorized by the client to act on behalf of a state's 529 plan.

Neither the First Request for Comment nor the Second Request for Comment contemplated that municipal advisors in municipal advisory relationships with 529 plans would be exempted or excluded, in whole or in part, from the proposed core standards of conduct, including aspects of the duty of care that a municipal advisor owes to a client. The MSRB believes that exempting municipal advisors from the proposed core standards of conduct would reduce the protections that Congress through the Dodd-Frank Act intended to provide to municipal entity clients and investors in 529 plan securities.

Fiduciary Duty—Authority

In response to the Second Request for Comment, Sanchez commented that the MSRB lacks the statutory authority to define ''fiduciary duty'' or to prescribe means designed to effectuate the performance of that duty.

As discussed above, the Exchange Act grants the MSRB statutory authority to adopt rules with respect to municipal advisors engaging in municipal advisory activities that are designed to, among other things, prevent fraudulent and manipulative acts and practices, and acts, practices or courses of business that are not consistent with a municipal advisor's fiduciary duty to its clients.[53] Accordingly, the MSRB has concluded that it is properly exercising the authority granted to it by statute.

Fiduciary Duty—Standards

In response to the First Request for Comment, NABL stated that the Initial Draft Rule should draw on established common law and similar standards that NABL believes are intended to provide substantive guidance regarding fiduciary duties (*e.g.,* the standards applicable to attorneys), rather than the standards applicable to broker-dealers or registered investment advisers. NABL argued that the attorney-client relationship is more comparable to the municipal advisor-client relationship

[52] *See, e.g.,* comment letters from: ABA, BDA, Cape Cod Savings, Cooperman, GKB, Kutak, Lewis Young, NABL, NAHEFFA, Parsons, Piper Jaffray and SIFMA. A few commenters, including First River Advisory, NAIPFA and Yuba, supported the application of a fiduciary duty to a municipal advisor when engaging in municipal advisory activities on behalf of an obligated person client.

[53] *See, e.g.,* 15 U.S.C. 78*o*–4(b)(2)(C); and 15 U.S.C. 78*o*–4(b)(2)(L)(i).

because both can have a wide spectrum of scopes of responsibilities, similar contexts in which there are interactions with the client, and a longer duration over which the representation occurs. BDA similarly believed that the fiduciary standards set forth in the Initial Draft Rule would not operate like other well-established standards, such as those for attorneys, and that the MSRB did not justify why the standards for municipal advisors would deviate from those standards as outlined in the Model Rules of Professional Conduct for attorneys (''Model Rules''). Accordingly, BDA suggested that Proposed Rule G–42 should adopt or parallel the same fiduciary duty standards used by other similarly situated professionals.

In developing Proposed Rule G–42, the MSRB consulted various codes of conduct and sources of federal and state law regarding the duties and obligations of a fiduciary that apply to professionals who are, or, in certain relationships, may be, fiduciaries. Some provisions of the proposed rule reflect principles incorporated from MSRB Rule G–17, including the duties of dealers to issuers, while other provisions were based on principles and requirements in the Investment Advisers Act. The MSRB believes the Investment Advisers Act is particularly relevant in developing a rule regarding fiduciary duties and obligations, and notes that the SEC also considered the Investment Advisers Act informative as it developed the SEC Final Rule.[54] Moreover, the MSRB believes it is important to establish rules and standards that address the practices of various types of municipal advisors and their clients, and that the provisions addressing the duties and obligations of a fiduciary are tailored to address the unique characteristics of the municipal securities market and the variety of responsibilities undertaken by municipal advisors in their relationships with municipal entity and obligated person clients. The MSRB notes that, to the extent that Proposed Rule G–42 does not specifically prescribe or prohibit certain conduct, or address certain activity, common law regarding fiduciary obligations and duties may be referenced by a judicial or adjudicatory decision-maker.

Fiduciary Duty—Obligated Persons

A number of commenters raised concerns that Proposed Rule G–42 implicitly and inappropriately imposes fiduciary duty obligations on municipal advisors whose clients are obligated persons without a demonstrated need for a more robust regulatory framework than that adopted by Congress or the SEC.[55] Those commenters believed that the treatment accorded to obligated persons should be distinguished from that accorded to municipal entities because, as they stated, obligated person clients do not handle public funds, are private, domestic and international for-profit companies or not-for-profit businesses, and, therefore, operate with a different level of public accountability. Overall, these commenters believed that fiduciary duties should not be mandatorily extended to benefit obligated persons.

NAHEFFA suggested that the duty of care and the requirements of the Initial Draft Rule G–42(b)–(f) be revised to state that municipal advisors owe a fiduciary duty only to their municipal entity clients. In the alternative, NAHEFFA requested that the MSRB provide clarification on the legal and practical distinctions among the standards and duties and obligations of municipal advisors vis-à-vis both types of clients, including a clarification that an alleged violation of the duty of care would be subject to review under a negligence standard and an alleged violation of the duty of loyalty would require evidence of intent. Generally, NAHEFFA supported either a revised Rule G–42, or a separate rule that would simplify and reflect the duties and obligations of a municipal advisor with respect to its obligated person clients. NAHEFFA suggested that, as to obligated person clients, the duty should be to exercise professional judgment and expertise in providing services and to deal fairly with its clients. Similarly to NAHEFFA, BDA requested that the MSRB revise Proposed Rule G–42 to more clearly state and distinguish between the duties and obligations that municipal advisors would owe to each of the two types of clients.

ABA commented that the MSRB lacked the requisite authority to impose a fiduciary duty on municipal advisors with respect to their obligated person clients, and that even if it had the authority, such a standard would be unworkable since banks would have difficulty identifying which of their many customers were obligated persons. ABA stated that the extension of a fiduciary duty to municipal advisors in their relationship with their obligated person clients would result in a significant risk that banks would inadvertently violate regulatory requirements by becoming an unwitting municipal advisor with respect to a client they did not know was an obligated person. Moreover, the banks would run the corresponding risk of violating the attendant fiduciary duty applicable to such municipal advisor.

More specifically, Sanchez commented that the language in Revised Draft Rule G–42(b)(i)(A) and (b)(i)(G) appeared to import the duty of loyalty and duty of care into representations of obligated persons by using the phrase ''unbiased and competent advice'' with respect to advice provided to or on behalf of obligated persons. He suggested that these provisions be revised to say ''impair its ability to render advice to or on behalf of the obligated person in accordance with the standards of conduct required in clause (a)'' in lieu of the phrase referencing ''unbiased and competent advice.''

Neither the Initial Draft Rule nor the Revised Draft Rule would deem municipal advisors to owe a fiduciary duty to obligated person clients, and the MSRB disagrees with the view that either the Initial or Revised Draft Rule implicitly and inappropriately imposed fiduciary duty obligations to such clients. After carefully considering the comments, the MSRB has not modified Proposed Rule G–42(a), on standards of conduct. Further, Proposed Rule G–42 follows the approach taken in the Dodd-Frank Act, deeming a municipal advisor to owe a fiduciary duty only to its municipal entity clients. However, although the Exchange Act fiduciary duty standard would not apply to a municipal advisor advising an obligated person client, all municipal advisors are subject to fair-dealing obligations under MSRB Rule G–17, which already requires a municipal advisor to deal fairly with *all* persons and prohibits engaging in any deceptive, dishonest or unfair practice. Moreover, the provisions in Proposed Rule G–42(b)–(f) appropriately establish the duties and obligations of municipal advisors. The MSRB notes that these duties are, in part, based on similar existing duties for other regulated entities (*e.g.,* underwriters' duties to issuers), which are separate and apart from a fiduciary duty. Therefore, the MSRB does not believe Proposed Rule G–42 creates an implicit fiduciary duty for municipal advisors with respect to the advice they provide to obligated person clients.

The MSRB agrees with Sanchez's specific comments regarding paragraphs (b)(i)(A) and (b)(i)(G) of the Revised Draft Rule and has revised the proposed rule change to clearly differentiate between the handling of conflicts of

[54] *See generally,* SEC Final Rule, 78 FR 67467.

[55] *See* letters from: ABA, BDA, Cape Cod Savings, GKB, Kutak, Lewis Young, NABL, NAHEFFA, Parsons, Piper Jaffray, Sanchez and SIFMA. On the other hand, NAIPFA, First River Advisory and Yuba supported imposing fiduciary duties upon municipal advisors with respect to the advice they provide to obligated persons.

interest under the duty of loyalty, as discussed in paragraph .02 of the Supplementary Material, and conflicts under the disclosure requirements that are applicable to all municipal advisory clients as part of a municipal advisor's duty of care, as discussed in paragraph .01 of the Supplementary Material. Specifically, under proposed subsection (a)(ii), the duty of loyalty in the proposed rule change, a municipal advisor must not engage in municipal advisory activities with a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests. Conversely, under proposed section (c) of Proposed Rule G–42 and as discussed further with respect to proposed paragraph .05 of the Supplementary Material, a municipal advisor can continue to serve as a municipal advisor to its municipal entity or obligated person client when an actual or potential conflict of interest that could be reasonably anticipated to impair its ability to provide that advice exists, so long as such conflict of interest is disclosed and addressed in accordance with the relevant provisions of Proposed Rule G–42 [56] and the municipal advisor can satisfy the applicable standards of conduct described in section (a).

NAHEFFA requested that the MSRB clarify the legal distinctions between the duty of care and duty of loyalty, and suggested that the state of mind standard to determine a violation of the duty of care should be negligence, and the state of mind standard regarding a violation of the duty of loyalty should be intent. In response to NAHEFFA's request for clarification regarding such standards, the MSRB believes it would be appropriate for the courts and other adjudicatory authorities to determine the ''state-of-mind'' elements when applying the standards of conduct of Proposed Rule G–42 to specific sets of facts and circumstances presented, drawing on existing jurisprudence regarding analogous duties of care and fiduciary obligations.

In response to ABA's comment, the MSRB again notes that determining which activities constitute municipal advisory activities requires a legal interpretation of the SEC Final Rule. Such authority is vested with the SEC rather than the MSRB.

Finally, the MSRB notes again that the standards of conduct in Proposed Rule G–42 would be minimum requirements, which the MSRB has developed to empower the client to a large extent to determine the scope of services and control the engagement with the municipal advisor, and as suggested by NABL, any municipal advisor and its client may agree to more stringent standards of conduct for their specific engagement.

Duty of Care—Supplementary Material .01

In response to the Second Request for Comment, WM Financial challenged the requirement that a municipal advisor ''undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information.'' While WM Financial agreed that a municipal advisor should make a reasonable investigation in order to determine whether a recommendation is in a client's best interest, WM Financial believed that a municipal advisor should be able to rely on publicly-available documents as being true and accurate, and should be able to assume that any additional information provided to it by the municipal entity is also true and accurate. WM Financial believed that requiring the municipal advisor to verify the accuracy of the information it receives from a client imposes an inappropriate burden. As noted above, ICI similarly opposed the requirement in the context of 529 plans, for which the municipal advisor that is also acting as a plan sponsor would typically work with and rely upon state employees who are authorized to represent a state's plan and requested revisions to paragraph .01 of the Supplementary Material.

Proposed paragraph .01 of the Supplementary Material would provide, as a core general standard, that a municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. There is no exception for information that is provided to the advisor by the client. The MSRB believes that the provisions of proposed paragraph .01 of the Supplementary Material remain appropriate and, as discussed above, does not believe that advisors to 529 plans should be relieved from an obligation to inquire as to the accuracy of material that is relevant to a municipal advisor's recommendation provided by its client or other parties. The MSRB further believes this provision of proposed paragraph .01 of the Supplementary Material would provide an objective standard for when it is appropriate for a municipal advisor to rely on information provided by a client when making a recommendation to such client, including representatives of a 529 plan authorized to act on behalf of the plan. Finally, because proposed paragraph .01 would require municipal advisors to undertake only a ''reasonable investigation'' of the veracity of the information on which it is basing a recommendation, municipal advisors would not be required to go to the impractical lengths suggested by commenters. The MSRB believes this standard would be sufficient to allow municipal advisors to assess their risk exposure to any reliance on that information and determine what potential mitigating actions need to be taken.

Sanchez also commented that the MSRB should ''consider whether the information for which 'a municipal advisor must have a reasonable basis for' incorporated in [subparagraphs] (a) through (c) [of paragraph .01 of the Supplementary Material] is not already addressed in the standards of conduct required of municipal advisors by MSRB Rule G–17 and general antifraud rules related to municipal securities disclosure.'' As such, he suggested deleting those provisions of paragraph .01 of the Supplementary Material to avoid unnecessarily duplicative regulatory requirements. The MSRB has decided to retain those provisions because it believes they would provide additional guidance regarding the proposed duty of care and would assist municipal advisors in satisfying that duty without unnecessarily duplicating the principles of MSRB Rule G–17 or other federal securities anti-fraud statutes.

Finally, SIFMA noted that, while the requirement for a municipal advisor to make a reasonable inquiry—regarding the facts that are relevant to a client's determination to pursue a particular course of action or that form the basis of any advice to the client—could be appropriate in the context of arranging a municipal securities issuance, it could be cost prohibitive in the case of ordinary brokerage and related advice, given the number of trades potentially involved, timing considerations and the general context of broker-related advice. Therefore, SIFMA did not believe that such a standard should be applied in addition to otherwise applicable suitability requirements that would attach to recommendations made in the context of brokerage/securities

[56] Municipal advisors would be required to disclose and document such a material conflict of interest under Proposed Rule G–42(b) and (c) and paragraph .05 of the Supplementary Material. With respect to municipal entity clients, municipal advisors also would need to provide an explanation to the client of how the municipal advisor intends to manage or mitigate its conflict in a manner that will permit it to act in the municipal entity's best interests.

execution services. The MSRB believes that the duties and standards in the proposed rule are appropriately applied to municipal advisory activities (other than the undertaking of a solicitation), and notes that a municipal advisor to a municipal entity client will owe a statutory fiduciary duty to the client. If the conduct SIFMA describes constitutes the giving of advice under the SEC rules providing for the registration of municipal advisors as discussed in the SEC Final Rule,[57] then Proposed Rule G–42 would apply in its entirety. Likewise, if such conduct did not constitute the giving of advice under those rules, then Proposed Rule G–42 would not apply.

Duty of Loyalty—Supplementary Material .02

In response to the First Request for Comment, ACEC and APTA indicated that they believed there are circumstances when the duty of loyalty could directly conflict with an engineer's professional and ethical responsibilities, and expressed concerns as to how such conflicts could affect engineering firms' business. Both ACEC and APTA specifically stated that, in the course of providing professional engineering services to a client, circumstances could arise in which the engineer would find himself or herself facing a conflict between breaching its fiduciary duty in its role as municipal advisor and violating the ethical obligations to which the engineer is subject under applicable state law and regulation, or one or more professional associations. According to ACEC, in such circumstances, it would be detrimental to the health, safety and welfare of the public to prioritize the fiduciary duty the engineer municipal advisor owed to its client. ACEC argued that paragraph .02 of the Supplementary Material, therefore, would not serve the public interest and requested that the MSRB address how this type of conflict could be managed.

The MSRB notes that SEC Rule 15Ba1–1(d)(2)(v) excludes engineers providing engineering advice from the definition of municipal advisor.[58] The MSRB further notes that the same and similar issues raised by the commenters in response to the First Request for comment also were raised with the SEC during its rulemaking to establish the registration regime for municipal advisors. In the SEC Final Rule, the SEC provided greater clarity to engineers concerning the definition of ''municipal advisor'' and the scope of the exclusion for engineers.[59] If, given that guidance, an engineer were in fact to engage in municipal advisory activities, it would be subject to the statutory fiduciary duty to a municipal entity client, and, in the MSRB's view, appropriately subject to the duty of loyalty provisions in Proposed Rule G–42. Under certain circumstances, if a material conflict of interest would prevent the municipal advisor from being able to act in accordance with the standards of conduct of section (a) of Proposed Rule G–42, which the MSRB believes would be rare, the firm might need to determine not to provide municipal advice if it preferred to provide engineering services.

Disclosure of Conflicts of Interest

The MSRB received a number of comments regarding section (b) of Proposed Rule G–42 on required disclosures of material conflicts of interest by municipal advisors to their clients. Generally, commenters were supportive of, or did not express an objection to, requiring municipal advisors to provide written disclosure of material conflicts of interest. However, some commenters did express concerns about some of the facets of the disclosure requirements; those concerns are described below and followed by the MSRB's response.

Compensation Arrangements

Several commenters expressed concern regarding paragraph (b)(i)(F) of Proposed Rule G–42, which requires municipal advisors to disclose conflicts of interest arising from compensation arrangements that are contingent on the size or closing of any transaction as to which the municipal advisor is providing advice.

Commenting on the Initial Draft Rule, Lewis Young stated that contingent fee arrangements benefit clients, particularly smaller municipal entities, because they allow municipal entity clients to finance the costs of the municipal advisor with the proceeds of the issuance. In their view, characterizing a contingent fee arrangement as a conflict of interest requiring disclosure to the client amounted to advising a client that the municipal advisor may not be acting in the client's best interest. They added that they believe the disclosure requirement would serve no useful purpose and could confuse clients. Sutherland stated that the Initial Draft Rule's required disclosure of contingent fee arrangements was duplicative of SEC Form MA [60] and, therefore, unnecessarily burdensome, and should be deleted.

Commenting on the Revised Draft Rule, Columbia Capital stated that the provision ''creates the appearance that the MSRB takes the position that one fee modality is less preferable to all others.'' Columbia Capital, Cooperman and Piper Jaffray commented that the proposed rule change should not single out one fee arrangement as being preferable to others. Columbia Capital, Cooperman and Piper Jaffray also contended that fee arrangements of any sort (hourly, fixed or non-contingent) create an adversarial relationship between the municipal advisor and its client. In Piper Jaffray's view, the potential conflicts of interest that are inherent in all fee arrangements are also ''generally knowable'' to both sides of a transaction and, therefore, the Revised Draft Rule's disclosure requirement would not be beneficial. Columbia Capital suggested deleting the provision.

WM Financial also expressed concerns regarding paragraph (b)(i)(F) of the Revised Draft Rule, but differed in its reasoning from Columbia Capital and Piper Jaffray. WM Financial disagreed with the premise that all fee structures create some conflict of interest. Rather, WM Financial stated that, because municipal advisors would be required to ''act in the best interest of their clients . . . good advice will prevent a fee arrangement from creating a 'conflict'.'' In their view, a ''conflict of interest does not exist when payment of fees is based on the success of services to be provided . . . .'' Like Lewis Young, WM Financial stated that contingent fees serve a valuable function because they allow small municipal entity clients to finance the cost of the municipal advisor with the proceeds from the issuance and ensure that the cost of the municipal advisor is only incurred after the successful completion of the issuance. WM Financial also requested that paragraph (b)(i)(F) be deleted.

The MSRB has considered the arguments and alternatives advanced by commenters and determined that requiring the disclosure of conflicts of interest arising from fee arrangements contingent on the size or closing of the transaction as to which the municipal advisor is providing advice is an appropriate and necessary measure to alert municipal entity and obligated person clients to the potential conflict of interest inherent in such fee arrangements. While the MSRB recognizes, as some commenters

[57] *See generally,* SEC Final Rule, 78 FR 67467.

[58] *See* 17 CFR 240.15Ba1–1(d)(2)(v). *See also* 15 U.S.C. 78*o*–4(e)(4)(C).

[59] *See* SEC Final Rule, 78 FR at 67529–32.

[60] *See* SEC Form MA, Items 4.H.–4.J.

pointed out, that other fee arrangements (such as hourly, fixed or otherwise non-contingent) might also give rise to conflicts, the MSRB believes that the potential harm to a client may be particularly acute if a client is not informed of a conflict of interest arising from a contingent fee arrangement. Furthermore, the MSRB does not agree with commenters that have argued that requiring a conflict of interest disclosure would suggest that the municipal advisor is not acting in the best interest of its client. The purpose of the disclosure requirement in proposed paragraph (b)(i)(F) simply would be to allow a municipal advisor's client to make an informed decision based on relevant facts and circumstances. Also, under the proposed rule change, municipal advisors would have the opportunity to provide a client with additional context about the benefits and drawbacks of other fee arrangements in relation to a contingent fee arrangement so that the client could choose a fee arrangement that serves its needs.

Disclosure of Conflicts of Interest to Investors

The MSRB received comments that called for the deletion of a provision set forth previously in the Revised Draft Rule as paragraph .08 of the Supplementary Material. Under the provision, if all or a portion of a document prepared by a municipal advisor or any of its affiliates were included in an official statement for an issue of municipal securities by or on behalf of a client of the municipal advisor, the municipal advisor would have been required to provide written disclosure to investors of any affiliation that would be a material conflict of interest under paragraph (b)(i)(B) of the Revised Draft Rule. The disclosure requirement also could have been satisfied if the relevant affiliate provided the written disclosure to investors.[61]

SIFMA supported deleting the disclosure requirement, noting that ''[m]unicipal advisors and their affiliates may have no contractual or other relationships (and in many cases have no form of privity) with investors, nor do they control the content of the Official Statement.'' SIFMA stated that it is the obligation of the issuer ''to make sure that its disclosure is materially accurate and complete'' and the responsibility of broker-dealers to comply with their obligations under applicable law. SIFMA observed that the municipal advisor is already required to provide the issuer with the same conflict disclosure under paragraph (b)(i)(B), arguing that the MSRB should leave the decision of whether to include such information in material distributed to investors to the issuer.

ICI and NABL also commented in favor of deleting the requirement. ICI provided comments similar to SIFMA's comments in response to both the Initial and Revised Draft Rules, but focused on how the required disclosure to investors would impact municipal advisors advising 529 plans. ICI supported requiring municipal advisors to disclose conflicts of interest to the municipal advisor's client but questioned why such information would be relevant to a person investing in 529 plan securities. ICI stated that if ''all material terms and conditions of the 529 plan offering already are disclosed in the offering document that is provided to investors and potential investors, this supplemental disclosure would not provide any additional protection to investors.'' In response to the First Request for Comment, NABL contended that requiring these disclosures would run contrary to the intent of the Dodd-Frank Act, which is to protect issuers. NABL suggested, as an alternative, that issuers be allowed to choose whether to disclose the conflicts of interest to investors.

The MSRB agrees with the commenters and notes that the provision could put municipal advisors in the impractical position of being required to make conflict of interest disclosures directly to investors or include the content of such disclosures in an issuer's official statement, although the municipal advisor may not have the authority or the means to do so. Moreover, because the proposed rule change would already require the municipal advisor to disclose all material conflicts of interest to the issuer, the MSRB believes the issuer will be well positioned to make the determination of whether to include such information in the official statement or other investor disclosure documents, consistent with the issuer's duties under all applicable law. In light of the comments and after a re-evaluation of the purpose and feasibility of the disclosure provision in the supplementary material as described above, the MSRB has deleted the provision.

Acknowledgment or Consent to Conflicts of Interest Disclosure

In response to the First Request for Comment, several commenters suggested differing approaches to the question of whether municipal advisors should be required to obtain some form of acknowledgment from their client of the conflicts of interest disclosures that municipal advisors are required to make under the proposed rule change.

In response to the First Request for Comment, NABL commented that the MSRB should follow the approach taken in the Model Rules of Conduct of the American Bar Association regarding the disclosure of conflicts of interest as stated in the Initial Draft Rule. NABL argued that municipal advisors should be required to obtain ''informed consent, confirmed in writing'' to each potentially waivable material conflict of interest. NABL stated that this standard is as appropriate for municipal advisors as it is for common law fiduciaries or attorneys. NABL suggested that the ''informed consent'' it advocated could be accomplished in several ways, including ''a writing evidencing an engagement, including a letter of intent, after disclosure to the client sufficient to establish informed consent.'' NABL contended that informed written consent from a municipal advisor's client is ''a necessary corollary to the requirement that an advisor disclose and provide sufficient detail about the nature of all material conflicts of interest.'' NABL also noted that informed consent confirmed in writing would be consistent with the requirements of the CFTC for commodity trading advisors. NAIPFA stated that it believed municipal advisors should be required to obtain an acknowledgment from their clients of the conflicts of interest that it has disclosed, saying that this would conform to the obligations of underwriters and other ''professionals possessing fiduciary duties.'' GFOA provided similar support for requiring an acknowledgment of the conflicts of interest disclosures from the municipal advisor's client but stated that, if such a requirement was added to the proposed rule change it would expect an explanation within the proposed rule change detailing how the acknowledgements of such conflicts relate to a municipal advisor's fiduciary duty.

In contrast to NABL, NAIPFA and GFOA, commenters including Cooperman, Lewis Young and Acacia commented that municipal advisors should not be required to obtain a written acknowledgment of disclosures

[61] Paragraph (b)(i)(B) of the Revised Draft Rule required written disclosure of ''any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by the disclosing municipal advisor.''

before proceeding with the engagement. Cooperman stated that acknowledgement of conflicts of interest disclosures from municipal entity clients is an unnecessary and unjustified requirement that should be removed. Lewis Young stated that such written disclosure should not be required ''so long as the disclosures provided are not objected to by the client.'' Proposing a somewhat different approach, Acacia stated that municipal advisors should not be required to obtain a written acknowledgement of the conflicts disclosed but should be required to (i) provide such information (and record such provision), (ii) request receipt and consent but (iii) be permitted to proceed with a municipal advisory engagement in the absence of such receipt and consent if the municipal advisor has a reasonable belief that such information has been received. Acacia reasoned that its approach would be analogous to existing MSRB guidance for underwriters under MSRB Rule G–17.

The proposed rule change would not require a municipal advisor to obtain written acknowledgement from its client of the disclosure of conflicts of interest. While the MSRB understands the concerns expressed by commenters, the MSRB believes that the proposed rule change sufficiently obligates municipal advisors to ensure that their clients receive proper notice of material conflicts of interest. Proposed paragraph .05 of the Supplementary Material, for instance, would require municipal advisors to provide information sufficiently detailed to inform a client of the nature, implications and potential consequences of each conflict, and include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict. Such disclosure would allow a municipal advisor's client to make an informed decision as to whether such conflicts can be adequately managed or mitigated. Furthermore, a municipal advisor's duty of care would require an advisor to have a reasonable basis for believing that its client received the disclosure and understood the nature, implications and potential consequences of the conflicts of interest that the municipal advisor disclosed. Further, the MSRB believes that obtaining some form of written acknowledgement from municipal entities and obligated persons would prove to be a significant procedural burden to both municipal advisors and their clients that would likely not result in a substantiated benefit.

Explanation of Mitigating Conflicts of Interest

As discussed above, proposed paragraph .05 of the Supplementary Material to Proposed Rule G–42, on conflicts of interest, would require a municipal advisor to include an explanation of how the municipal advisor would address, or manage or mitigate, the material conflicts of interest that it has disclosed to its client. In response to the Second Request for Comment, Sanchez challenged the value and purpose of this requirement by opining that municipal securities brokers and dealers are not subjected to the burden of making such disclosures. Sanchez requested that the MSRB revise the proposed rule change to require such disclosures only if requested by the client.

The MSRB has considered Sanchez's comments and determined not to amend proposed paragraph .05 of the Supplementary Material because the MSRB believes that the provision would serve a beneficial and protective function for clients. The municipal advisor's explanation would allow its client to adequately assess the potential effects the conflicts of interest could have on an engagement with the municipal advisor and to determine whether the actions the municipal advisor proposes to take to mitigate the conflicts of interest are sufficient and will not overly impair the quality and neutrality of the services to be performed by the municipal advisor.

Services for Conduit Issuers and Obligated Person Clients

Under subsection (e)(ii) of Proposed Rule G–42, a municipal advisor would be precluded from serving its municipal entity client as underwriter for a transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity.

In response to the Second Request for Comment, BDA commented that the proposed rule should explicitly allow a dealer/municipal advisor to serve as an underwriter for a conduit issuer and as a municipal advisor for the conduit borrower, even with respect to directly related matters.

Underwriting such a transaction would not be specifically prohibited by the ban on principal transactions in subsection (e)(ii) of Proposed Rule G–42, because it applies only in cases of municipal entity clients. A conduit borrower is typically not a municipal entity. Thus, depending on the specific facts and circumstances, this scenario could be permissible with appropriate disclosure and consent. Still, it is not clear that, even with disclosure and consent, such activity would be categorically consistent with all of the duties of a municipal advisor to an obligated person in all circumstances. Therefore, the MSRB has not amended the proposed rule as suggested by BDA.

Material Conflicts of Interest Required To Be Disclosed

Section (b) of Proposed Rule G–42 would include a non-exhaustive list of matters that would always constitute material conflicts of interest and that would be required to be disclosed by municipal advisors under the proposed rule change. Matters that must be disclosed as material conflicts of interest under section (b) include, among others: Any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client; any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client; any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

In response to the First Request for Comment, Lewis Young stated that the proposed rule should only require disclosure when an actual conflict of interest exists because providing tailored explanations of potential or hypothetical situations would be ''expensive, time consuming, and not very helpful.'' The MSRB disagrees and believes that the likely benefits from these disclosures will outweigh the cost associated with providing them to a municipal advisor's clients because the proposed rule change limits the required disclosure to only material conflicts of interest, both actual and potential, of which a municipal advisor is aware of after a reasonable inquiry. The MSRB also believes that requiring a municipal advisor to disclose conflicts of interest, actual and potential, that the municipal advisor becomes aware of after reasonable inquiry and that could reasonably be anticipated to impair the municipal advisor's ability to provide advice in accordance with the standards of conduct in section (a) of the rule, is necessary to provide clients with the requisite information to make an

informed decision regarding the selection of their municipal advisor.

ICI suggested adding prefatory language to section (b) that would clarify that a municipal advisor would be required to disclose only conflicts of interest that are applicable to its relationship with the specific client. ICI stated that adding such language would harmonize section (b) with the approach taken in the Investment Advisers Act regarding the delivery of brochures,[62] which it believed permits an investment adviser to omit ''inapplicable information'' from a disclosure it is required to provide to clients. The MSRB believes that Proposed Rule G–42 makes clear that municipal advisors are required only to make disclosure of material conflicts of interest and that this would exclude inapplicable information.

First Southwest expressed concern regarding the requirement of subsection (b)(i) that municipal advisors must provide written notice when they have no material conflicts of interest to disclose to their clients. First Southwest stated that the requirement would increase administrative requirements and provide little, if any, benefit in the event a conflict of interest were later discovered. The MSRB disagrees and believes that an affirmative written statement by the municipal advisor that it has no known material conflicts of interest would remove potential ambiguities about the completeness of the conflicts disclosure.

Sutherland commented that the conflicts of interest required to be disclosed would be duplicative of information that could be found in SEC Forms MA and MA–I and, therefore, would be unnecessary. As an example, Sutherland stated that SEC Form MA requires the disclosure of affiliated business entities; compensation arrangements; and proprietary interests in municipal advisor client transactions.[63] While some overlap could exist, the MSRB believes that the SEC forms do not solicit all of the information that would be required by the proposed rule change and, thus, would not serve as a sufficient substitute. Specifically, the SEC forms would not be a viable proxy for disclosing potential conflicts of interest that the municipal advisor could have, nor would the forms contain an explanation of how they intend to mitigate the material conflicts of interest that they disclose. The MSRB expects that the written disclosure of material conflicts of interest will be a useful tool to municipal advisor clients that will allow them to readily assess the impact of actual or potential conflicts of interest of potential or ongoing municipal advisory activities.

In response to the Second Request for Comment, SIFMA requested clarification regarding the standard for determining the materiality of the conflicts of interest described in paragraphs (b)(i)(A) and (G), and when disclosure is required. Under the Revised Draft Rule, paragraphs (b)(i)(A) and (G) required municipal advisors to disclose ''any . . . potential conflicts of interest . . . that might impair'' a municipal advisor's advice or its ability to provide advice in accordance with section (a) of Proposed Rule G–42. The language in these paragraphs concerned certain commenters, such as SIFMA, because they believed that such a standard would include nearly all imaginable conflicts of interest and result in overly broad disclosure that could distract from the provision's purpose. Therefore, to clarify, the MSRB has amended these paragraphs to state that disclosure is required, in paragraph (A) for ''any actual or potential conflicts of interest,'' and, in paragraph (G), for ''any other engagements or relationships.'' The MSRB believes that this revised language would more clearly establish a limiting, objective standard for disclosing certain conflicts of interest that would be relevant to a municipal advisor's client.

Further, paragraphs (b)(i)(A) and (G), as proposed, are revised to limit the disclosure of conflicts required under paragraphs (b)(i)(A) and (G) to those that potentially impact the advisor's ability to provide ''advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.'' Previously, under the Revised Draft Rule, paragraphs (b)(i)(A) and (G) required a municipal advisor to provide disclosure of conflicts of interest that ''might impair its ability either to render unbiased and competent advice to'' its clients. This revision was made after re-evaluation of the phrasing used in the paragraphs and consideration of comments received from Sanchez. Sanchez stated that the use of the phrase ''unbiased and competent advice'' in the Revised Draft Rule ''. . . appear[s] to import the duty of loyalty and duty of care into the representations of obligated persons. . . .'' The MSRB agrees that the use of the phrasing ''unbiased and competent advice'' does not encompass all of the duties municipal advisors owe their clients, nor would it sufficiently differentiate between the standards of conduct owed by municipal advisors to their municipal entity clients and obligated person clients. The MSRB believes that the revised standard for identifying material conflicts of interest under proposed paragraphs (b)(i)(A) and (G) will more clearly reflect the standards of conduct in proposed section (a) and appropriately differentiate between municipal entity and obligated person clients.

In response to the Second Request for Comment, Sanchez also suggested a revision to clarify the last sentence of subsection (b)(i) of the Revised Draft Rule. Sanchez suggested deleting the term ''written documentation'' and using ''written statement'' instead to clarify for municipal advisors the action required to comply with subsection (b)(i). To remove any ambiguity, the MSRB has revised proposed subsection (b)(i) to clarify that, when appropriate, a municipal advisor must provide a ''written statement'' that the municipal advisor has no known material conflicts of interest.

Columbia Capital requested clarification regarding whether the disclosures required by the Revised Draft Rule may be made in more than one document. The required disclosures indeed may be provided to clients in more than one document, as long as the document and its delivery otherwise comply with the proposed rule. Because the language of the proposed rule is not to the contrary, the MSRB has not made any revisions in response to this comment.

FSR commented that use of the term ''indirectly'' in paragraph (b)(i)(B) in the Revised Draft Rule, which required disclosure of ''any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly or *indirectly* related to the municipal advisory activities to be performed by the disclosing municipal advisor,'' expanded the scope of the required disclosures unnecessarily and would make compliance difficult for a municipal advisor that is part of a large multi-service financial conglomerate. FSR believed that the Revised Draft Rule did not provide municipal advisors with sufficient guidance to identify activity that could be indirectly related to municipal advisory activities, and, taken in its plain meaning, could lead to a substantial burden on firms having numerous affiliates that provide a wide array of services. After further consideration of the purpose and intent of the proposed paragraph, the MSRB has removed the clause ''or indirectly.'' The MSRB believes revised proposed paragraph (b)(i)(B) will provide the

[62] *See* 17 CFR 275.204–3.

[63] *See* SEC Form MA, Items 1.K., 4.H.–4.J. and 7.A.–7.F., respectively.

appropriate notice to clients of the relationships of any affiliates of the municipal advisor that are likely to present material conflicts of interest.

Disclosure of Legal or Disciplinary Events

Several commenters addressed the draft requirements to disclose legal or disciplinary events. FSR commented that subsection (b)(ii) of the Revised Draft Rule would require a separate written disclosure of legal or disciplinary events that is redundant of the requirements of subsection (c)(iii) of the Revised Draft Rule. FSR requested that ''these disclosure requirements be deemed satisfied if an advisor provides information about where clients may access electronically the advisor's most recent [SEC] Forms MA and MA–I, along with the date of the last material amendment to any legal or disciplinary event disclosure on such forms.'' SIFMA, in response to the Second Request for Comment, similarly stated that requiring ''[duplicative] disclosure of specific events that are already disclosed in [SEC] Forms MA and MA–I provides little, if any, benefit to municipal entities or obligated persons, while it imposes unnecessary additional burdens on municipal advisors.'' SIFMA suggested that providing clients with the information regarding how to obtain electronic access to a municipal advisor's legal and disciplinary history on SEC Forms MA and MA–I should suffice. Sanchez stated, regarding the Revised Draft Rule, that ''[t]his requirement appears to be overly burdensome . . . , [and] it should be sufficient for purposes of this rule that a municipal advisor be required to direct clients to their EDGAR filings by providing clients with sufficiently specific information to locate their EDGAR filings.'' [64]

The MSRB contemplated that municipal advisors would be able to satisfy their disclosure of legal and disciplinary events under sections (b) and (c) of the Revised Draft Rule with specific reference to the relevant portions of their most recent SEC Forms MA or MA–I filed with the Commission. Proposed Rule G–42(b)(ii) further clarifies this intention, and requires the municipal advisor to provide detailed information specifying where the client may electronically access such forms. The MSRB believes this approach will address the issue of duplicative disclosure of the disciplinary and other legal events contained in SEC Forms MA and MA–I. This revision also clarifies that municipal advisors may satisfy the disclosure requirements of subsections (b)(ii) and (c)(iii) in a similar fashion.

A municipal advisor could, conceivably, simultaneously satisfy the requirements of proposed subsections (b)(ii) and (c)(iii) in one document if it were provided to the client prior to or upon engaging in municipal advisory activities for the client. However, if combined written disclosure and relationship documentation were made after a municipal advisor engages in municipal advisory activities, the municipal advisor would only be in compliance with proposed subsection (c)(iii) and not subsection (b)(ii).

SIFMA also suggested that subsection (c)(iv) of the Revised Draft Rule should be removed. The subsection would require municipal advisors to document the date of the last material change, including any addition, to the legal or disciplinary event disclosures on any SEC Form MA or MA–I filed with the Commission. Specifically, SIFMA believed that requiring municipal advisors to update their written disclosures and documentation with each of their municipal advisory clients whenever a material change to a legal or disciplinary event was made to any SEC Forms MA or MA–I would be unjustified.

Proposed section (c) requires the documentation of the municipal advisory relationship to be promptly amended or supplemented to reflect any material changes or additions, and requires the amended documentation or supplement to be promptly delivered to the municipal entity or obligated person client. However, the MSRB does not believe the update requirement under proposed section (c) is overly burdensome because municipal advisors need only provide the date of the last material change, including any addition, to their legal or disciplinary event disclosure to their clients, as they would be permitted to reference their SEC Forms MA and MA–I for the details of such material changes. Additionally, the required documentation of the municipal advisory relationship could be satisfied through the use of more than one writing and updates or amendments to such documents could be additional, separate writings that either amend or supplement earlier writings. The MSRB believes these accommodations sufficiently address the concern that municipal advisors would be required to amend and redistribute a single writing every time a material change or addition needed to be included. Further, the MSRB believes that, by requiring municipal advisors to update the written documentation relating to legal or disciplinary event disclosures provided to municipal entities and obligated persons, proposed subsection (c)(iv) would help ensure that those clients have sufficient, accurate and current information to better inform their decisions to engage and/or continue engaging a municipal advisor. The MSRB notes that the requirements of proposed section (c) must be made in writing and delivered to the municipal advisor's client in accordance with the duty of care and, as applicable, the duty of loyalty.

Coastal, Kutak and Parsons objected to the Initial Draft Rule's requirement to disclose the legal and disciplinary events for all individuals at a municipal advisory firm for which the firm is required to submit an SEC Form MA–I. They suggested that municipal advisors should not be required to disclose to a client legal and disciplinary events that relate to an individual that is employed by the municipal advisor, if that individual is not a part of (or reasonably expected to be a part of) the advisor's team working for the client. Although there could be numerous municipal advisors with large numbers of employees, as Coastal indicated, the MSRB believes there is insufficient cause to narrow the requirement of this disclosure obligation. Specifically, the MSRB notes that, although all of a municipal advisor's employees might not be a part of the team working on a particular client matter, the number of employees with legal or disciplinary events that a municipal advisor employs and the nature of any past legal or disciplinary events related to those employees could be material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel. In any event, since a municipal advisor could satisfy Proposed Rule G–42(b)(ii) and (c)(iii) by providing information specifying where the client can electronically access SEC Forms MA and MA–I, there would be little additional burden imposed on municipal advisors by leaving the scope of these requirements unchanged.

[64] In response to the First Request for Comment, Sutherland suggested that there is sufficient disclosure about disciplinary history provided in a municipal advisor's SEC Forms MA and MA–I filed with the SEC, and Parsons stated that disclosure should not be required in the rule given such public disclosure on those forms. Similarly, Lewis Young and NAIPFA believed the disclosure of legal or disciplinary events would be duplicative and unnecessarily burdensome and also suggested that municipal advisors should be able to satisfy the requirement by referencing SEC Forms MA or MA–I.

Type of Writing(s) Required To Document the Municipal Advisory Relationship

Several commenters discussed the matter of documenting the municipal advisory relationship and the type of writing that should be required to evidence the municipal advisory relationship between the municipal advisor and its client.

FLA DBF, correctly recognizing that the Revised Draft Rule's reference to a ''writing'' does not require a written contract, suggested that the proposed rule change should be amended to require municipal advisors to enter into written contracts with their municipal entity clients regarding their municipal advisory relationships. In contrast, GFOA, while also correctly recognizing that the Revised Draft Rule does not require a written contract, supported the absence of a contract requirement. GFOA noted that although entering into a bilateral contract is a GFOA best practice, ''there may not always be a need for a specific contract.'' GFOA agrees with the MSRB that the municipal advisory relationship should be stated in writing as it would allow the issuer to clearly delineate the scope of work it intends its municipal advisor to provide.

A number of other commenters, including ABA, BDA, ICI, Lewis Young, MSA, NAIPFA and SIFMA, however, construed section (c) of the proposed rule as requiring a written contract, leading them to raise various concerns about the proposed rule applying to existing contracts that might need to be revised. As a result, these commenters suggested the inclusion of various kinds of transitional rule provisions to address these issues. ABA and Lewis Young, for example, requested a transitional provision to permit advisors to honor their existing agreements with their clients until they expire. ICI recommended that the MSRB clarify that, if approved, Proposed Rule G–42 would only apply prospectively. SIFMA requested that the MSRB limit or eliminate the need for municipal advisors to re-document their municipal advisory relationships and apply the disclosure requirements of the proposed rule only to future agreements. MSA requested guidance on whether the obligations of section (c) of Proposed Rule G–42 could be satisfied by a contract (such as a Master Services or Professional Services Agreement) between the municipal advisor and its client.

The documentation requirement of section (c) of Proposed Rule G–42, as with the Revised Draft Rule, would not require the creation of new contractual relationships or the modification of existing contracts or agreements between municipal advisors and their clients. The purpose of the requirement is to help ensure that certain terms of each municipal advisory relationship would be reduced to writing and delivered to the municipal advisor's municipal entity or obligated person client. So long as the content of the documentation adheres to the requirements of the proposed rule (including the standards of conduct in section (a)), municipal advisors and their clients have some latitude in deciding the exact form the documentation and writing might take. If municipal advisors have already delivered documentation meeting some or all of the requirements of proposed section (c), then municipal advisors would be able to rely on such documents to satisfy some or all of their obligations under section (c). While certainly permitted, the proposed rule would not require municipal advisors to enter into written contracts with their municipal entity or obligated person clients and municipal advisors could satisfy the requirements of provision (c) by providing separate or supplemental documents to any preexisting contract, agreement or writing previously provided that might be in place between the municipal advisor and its client. The relevant part of proposed section (c) has been further revised to delete the phrase ''enter into'' (which could have connoted the formation of a contract) and reads as follows: ''A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship.'' The MSRB believes that requiring the documentation to take the form of a bilateral contract would be unnecessary and could lead to some of the burdensome consequences identified by commenters. The amendments to the Revised Draft Rule should clarify that municipal advisors would not be required to alter or re-execute any existing contract and that, in the future, the documentation and disclosure requirements could be satisfied in writings that are either included in a contract or separate and independent of any contract entered into between the municipal advisor and its municipal entity or obligated person client.

In response to the First Request for Comment, BDA and GKB stated that they generally supported the documentation and disclosure requirements of section (c) of the Initial Draft Rule but believed, with respect to municipal financial products, that a ''written agreement'' (as they believed was required by section (c)) should only be required when municipal advisory activities are engaged in for compensation. Based on their comments, it appears that BDA and GKB understood section (c) to implicitly require the municipal advisor and its client to evidence their municipal advisory relationship with a bilateral contract. NAIPFA, in its response to the Initial Draft Rule, asked the related question: ''Does this mean that the writing must be a two party agreement?'' NAIPFA also suggested that the MSRB amend section (c) to allow municipal advisors to satisfy the requirements of the section through an engagement letter. As previously stated, section (c) would not require, or preclude the use of a bilateral contract or engagement letter to evidence the municipal advisory relationship. So long as the content adheres to the requirements of Proposed Rule G–42 (including the standards of conduct of section (a)), municipal advisors and their clients would have some latitude in deciding the exact form the documentation and writings might take.

NAIPFA expressed concerns regarding the amount of information that would be required to be included in the documentation required by section (c), stating that municipal advisors would be put at a ''significant competitive disadvantage to their [underwriting] counterparts . . . [because] underwriters are not mandated to include any particular contract-related terms within their engagement letter, such as clauses relating to the termination of the relationship or their obligations relating to certain aspects of the transaction . . . .'' The MSRB does not believe the proposed documentation requirement would result in the competitive disadvantages described by NAIPFA. First, underwriters are required to make similar disclosures to issuers of municipal securities under MSRB's fair dealing rule, Rule G–17, which includes certain disclosures regarding the underwriter's compensation. Second, to the extent any of the requirements of section (c) are included in a written agreement, contract, engagement letter or similar document already in possession of the client, such information would not need to be included in a separate writing delivered to the municipal advisor's client. Instead, municipal advisors would be

able to supplement existing writings to comply with section (c). Finally, because a municipal advisor generally would be prohibited from acting as an underwriter for a transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice, the MSRB believes it would be unlikely that a municipal advisor would be in direct competition with an underwriter as suggested by NAIPFA.

In response to the Initial Draft Rule, ICI suggested that section (c) be revised to specify that only material changes to the information provided in the documentation required by section (c) would trigger the updating requirement. The MSRB did not intend by section (c) to require the supplementation of immaterial information and section (c) of the proposed rule has been revised to provide this clarification.

Triggering the Documentation Required by Section (c)

Under the Initial Draft Rule, a municipal advisor would have been required to evidence each of its municipal advisory relationships by a writing entered into prior to, upon or promptly after the inception of the municipal advisory relationship. In response to the First Request for Comment, Northland commented that section (c) of the Initial Draft Rule should require that the documentation be in place prior to engaging in municipal advisory activities rather than being permitted to be created and provided subsequently (*i.e.,* after the establishment of a municipal advisory relationship (as defined by the Initial Draft Rule)). Northland opined that its approach would align the proposed rule change with analogous requirements and principles of the SEC Final Rule. Northland also argued that earlier documentation of the municipal advisory relationship is warranted for the same reasons it believes justify the proposed rule change's requirement to disclose conflicts of interest upon or prior to engaging in municipal advisory activities. The MSRB has considered when municipal advisors should be required to document their relationship with their clients and determined that documentation should only be required after both parties have agreed that the municipal advisor would engage in municipal advisory activities for or on behalf of the client. It is understood by the MSRB that a municipal advisor could engage in municipal advisory activities while seeking an engagement to perform municipal advisory activities but then might ultimately not be engaged by the client. Also, in some instances, a municipal advisor could be called upon to engage in municipal advisory activities on behalf of its client on short notice for a time-sensitive matter. In such scenarios, the MSRB does not believe it would be appropriate, or necessary, to require documentation of the municipal advisory relationship because, as with the first case, there is a reasonable possibility that no municipal advisory relationship would materialize and, with regard to the second, the MSRB does not want to inhibit a municipal advisor from performing its municipal advisory activities for municipal entities and obligated persons when time is short and documenting the municipal advisory relationship might not be feasible. The MSRB believes that, when balanced against the potential benefits of requiring earlier documentation of the municipal advisory relationship, the timely disclosure of material conflicts of interest (in accordance with section (b) of Proposed Rule G–42) will sufficiently mitigate the potential consequences identified by Northland and will serve as sufficient protection to a municipal advisor's client to make an informed decision about whether to accept the advice provided by the municipal advisor until such time that documentation containing the information required by section (c) can be created and delivered.

On a separate but related matter, Northland stated that the use of the term ''municipal advisory relationship'' would likely lead to confusion between how Northland believes the term is used by municipal advisors and other industry participants and how the term had been defined for purposes of the Initial Draft Rule. Northland believed that it would be difficult for municipal advisors to parse apart and document ''municipal advisory relationships'' when some of those relationships are ''historical and ongoing'' and are rarely thought of as separate relationships. The MSRB believes that the definition provided in Proposed Rule G–42(f)(vi) would provide sufficient guidance to municipal advisors in this regard. That provision would state that a municipal advisory relationship is deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person and ends on, the earlier of, the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship, or the date on which the municipal advisor withdraws from the municipal advisory relationship.

In response to the Second Request for Comment, Piper Jaffray, while generally supportive of the documentation requirement of section (c) of the Revised Draft Rule, expressed concern that it could require premature documentation of a municipal advisory relationship. Specifically, Piper Jaffray stated that section (c) could require documentation when the municipal advisor has not been selected by its client to be its municipal advisor and, instead, is, in fact, engaging in municipal advisory activities as a means to obtain the engagement with the client to perform municipal advisory activities. Section (c) of the Revised Draft Rule, however, explicitly stated that the documentation requirement would only be triggered ''prior to, upon or promptly after the establishment of the *municipal advisory relationship''* (emphasis added). As defined in subsection (f)(vi), a municipal advisory relationship would only be deemed to exist when the ''municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person.'' Thus, Proposed Rule G–42 would not necessarily require the provision of relationship documentation during an early stage of municipal advisory activities when the municipal advisor is still pursuing an engagement to perform municipal advisory activities.

Other Comments Regarding the Documentation Requirement

Consolidation. In response to the Revised Draft Rule, Piper Jaffray suggested that the disclosure and documentation requirements of sections (b) and (c) could be more clearly established if the sections were merged. In particular, Piper Jaffray found it confusing that a municipal advisor providing ''advice,'' but that has not yet been engaged by an issuer, must provide disclosures related to its compensation under paragraph (b)(i)(F). Piper Jaffray then posed the question: ''[I]s the intention of the [MSRB] to assure that municipal advisors must provide conflicts disclosure when providing information that would constitute 'advice' prior to [being] engaged[?]'' Piper Jaffray suggested that the intention and purpose of the proposed rule change could be better served if the required disclosures and documentation of the municipal advisory relationship were provided when the advisor is selected by the issuer to provide it with advice.

The MSRB has considered Piper Jaffray's recommendation to merge

sections (b) and (c) and modify the timing of the disclosure requirement, but believes such amendments would conflict with the intention of having municipal advisors disclose conflicts of interest upon or prior to engaging in municipal advisory activities for the client. Combining the paragraphs could cause municipal advisors to delay making the proposed rule's required disclosures until the municipal advisory relationship has been reduced to writing, which could be a significant amount of time after the client has received, and potentially acted on, advice from the municipal advisor. For these reasons, the suggested changes are not included in Proposed Rule G–42.

Indirect Compensation and Treatment of Incidental Informal Advice. Regarding the documentation of the municipal advisory relationship, SIFMA requested that Proposed Rule G–42 include a definition of ''indirect compensation'' as it is used in subsection (c)(i). On a related topic, SIFMA requested that the MSRB ''clarify that informal advice that is incidental to providing brokerage/securities [services] would not, alone, trigger a written documentation requirement under [section (c) of the Revised Draft Rule] . . . .''

The MSRB believes that additional clarification within the proposed rule change is not necessary because the phrase ''indirect compensation'' is widely used and understood in the municipal advisory and securities industry and is well established in securities statutes and jurisprudence. Providing a definition of ''indirect compensation'' within Proposed Rule G–42 might reduce clarity regarding the general understanding of the phrase and lead to unnecessary confusion in an instance where sufficient guidance is already available.

Regarding SIFMA's request pertaining to advice that is incidental to providing brokerage/securities services, the MSRB notes that the proposed rule change would apply to a scope of municipal advisory activities as defined in the SEC Final Rule. Whether certain activities constitute ''advice'' under the SEC Final Rule is a legal interpretation within the authority of the SEC, and not the MSRB, to make.

Recommendations and Review of Recommendations of Other Parties

Section (d) of Proposed Rule G–42 would provide that if a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to its client, the municipal advisor must determine, based on the information obtained through reasonable diligence, whether the transaction or product is suitable for the client. Section (d) also would contemplate that a municipal advisor could be asked to evaluate a recommendation made to its client by another party, such as a recommendation by an underwriter of a new financing structure or a new financial product. Section (d) would require municipal advisors to conduct a suitability analysis—when requested by the client and within the scope of the engagement—of the recommendations of these third parties, guided by the requirements and principles contained in relevant portions of the supplementary material (such as paragraphs .01, .08 and .09).

Commenters raised a number of issues with section (d) of Proposed Rule G–42 (sections (d) and (e) of the Initial Draft Rule) and the related paragraphs .01 (Duty of Care), .08 (Suitability) and .09 (Know Your Client) of the Supplementary Material to Proposed Rule G–42. Below is a summary of, and response to, these comments.

General Comments Regarding Section (d)

In response to the Second Request for Comment, NAIPFA and GFOA expressed their general support for the Revised Draft Rule's suitability standard of section (d) of Proposed Rule G–42. NAIPFA believed it appropriately reflects a municipal advisor's fiduciary duties to its municipal entity clients.

Compliance and Examination. BDA, in response to the Second Request for Comment, expressed its support of the Revised Draft Rule's requirement to have municipal advisors review recommendations of other parties, but requested specific guidance on how municipal advisors would develop reasonable policies to comply with section (d). BDA also expressed concern about how FINRA examiners would test a dealer's compliance with the requirements of section (d) when serving as a municipal advisor.

The MSRB believes it has provided sufficient guidance to municipal advisors about the principles and requirements that should inform, and be incorporated in, a municipal advisor's policies and procedures by identifying the matters in the proposed rule text (such as in subsections (d)(i)–(iii) and paragraphs .01, .08 and .09 of the Supplementary Material) that a municipal advisor must, as applicable, consider when forming its advice or recommendation. The MSRB recognizes the diversity of the population of municipal advisors and the municipal advisory activities in which they engage in and believes the primarily principles-based approach taken by the proposed rule change will accommodate that diversity. The MSRB also believes this approach will clearly establish the minimum requirements and principles, which financial regulators could then consistently apply in their examination of municipal advisors.

Updating Recommendations. In response to the Second Request for Comment, SMA requested that the MSRB clarify that the suitability of a recommendation would be determined by the facts and circumstances at the time a client enters into the municipal securities transaction and that the municipal advisor should not have continuing responsibility to update its determination.

The MSRB believes that whether advice given or recommendations made by municipal advisors would need to be updated would depend on the facts and circumstances surrounding the advice and recommendation, including, but not limited to, the scope of the services that the municipal advisor agreed to provide its client. The MSRB believes that the reasonableness of a municipal advisor's recommendation or advice would be determined by considering the information relied upon by, and available to, the municipal advisor at the time the recommendation is made or advice is given to its client. However, over the course of an ongoing municipal advisory relationship, it is possible that a municipal advisor would, as part of its duty of care, need to apprise its client of changes to the suitability of the advice or recommendation it had previously given. In such cases, a municipal advisor's responsibilities would depend upon the facts and circumstances and the parameters of its municipal advisory relationship. The MSRB believes that the proposed rule change will provide municipal advisors with the requisite guidance to comply with its requirements.

Third-Party Recommendations. Lamont and First Southwest, in response to the First Request for Comment, requested clarification regarding whether a municipal advisor must review any third-party recommendation related to the advice that the municipal advisor has agreed to provide.

Proposed Rule G–42 would require municipal advisors to review a third-party recommendation when such a review is within the scope of the engagement between it and its client or if such a review would be part of the reasonable diligence required to reasonably determine whether a recommendation or advice is suitable

for its client. Therefore, a municipal advisor's obligation to review third-party recommendations would depend on the facts and circumstances of each particular instance. The MSRB believes that section (d) and the relevant portions of the supplementary material of the proposed rule change will provide sufficient guidance to municipal advisors presented with such scenarios.

Informing Client of Matters Related to Review of Recommendation. In response to the First Request for Comment, Northland commented that the Initial Draft Rule's requirement that municipal advisors must, under section (d), *discuss* matters such as the material risks of a recommendation and the basis upon which the municipal advisor reasonably believes its recommendation is suitable for its client would encourage written documentation of such discussions and create the potential for conflict between the information provided by the municipal advisor and the actions ultimately taken by the client. It appears that Northland's concern is that a municipal advisor could be exposed to liability in an *ex post* review of its suitability analysis.

The MSRB received other comments related to the Initial Draft Rule's requirement that municipal advisors must *discuss* these matters with their clients. In response, the Revised Draft Rule included a modification that required municipal advisors to *inform* their clients of the matters specified in proposed section (d). The modification was made to grant some flexibility to municipal advisors in the manner in which the matters are delivered to their clients. The MSRB understands that a municipal advisor's client could elect to engage in a course of action that deviates from the municipal advisor's recommendation. For purposes of compliance with section (d), however, a client's decision to disregard its municipal advisor's recommendation would alone have no bearing on whether the municipal advisor conducted an adequate analysis of the recommendation it provided. An examination for compliance with section (d) would focus on the adequacy of the suitability analysis provided by the municipal advisor, not whether the client ultimately pursued the municipal advisor's recommendation.

Limiting Duty to Review Recommendations of Others. In response to the First and Second Request for Comment, NAIPFA stated that, when a municipal entity or obligated person has engaged an independent registered municipal advisor [65] and is also obtaining advice from a third party that is relying upon the independent registered municipal advisor exemption from the SEC registration requirement [66] to provide advice to the municipal entity or obligated person, the independent registered municipal advisor should not be permitted to limit the scope of the engagement with its client so as not to include the review of recommendations made by the third-party.

The MSRB has considered, yet disagrees with, NAIPFA's position. The MSRB believes that municipal advisor clients, with the agreement of the municipal advisor, should be able to define the scope of their municipal advisory relationships and thus determine what services the municipal advisor will provide. Furthermore, requiring municipal advisors to review all third-party recommendations could result in a costly burden to municipal entities and obligated persons that do not expect to derive sufficient value from such review. However, the MSRB acknowledges that limiting the scope of the engagement between a municipal entity or obligated person and its independent registered municipal advisor could affect a third party's ability to qualify and make use of exemptions discussed in the SEC Final Rule, including the exemption mentioned by NAIPFA.[67]

Request for Definition of ''Independent'' as Used in Paragraph .03 of the Supplementary Material

BDA, in response to the First Request for Comment, requested that the MSRB define the term ''independent'' for purposes of paragraph .03 of the Supplementary Material, action independent of or contrary to advice, to the Initial Draft Rule. Proposed paragraph .03 states that a municipal advisor would not be required to disengage from a municipal advisory relationship if its client were to elect a course of action that is ''independent or contrary'' to the advice provided by the municipal advisor. BDA asked if ''independent'' would mean that the municipal advisor's client is not relying on or considering the advice of the municipal advisor; that the client is not seeking advice from the municipal advisor; or, that the client is acting contrary to advice given by the municipal advisor.

Proposed paragraph .03 of the Supplementary Material was designed to address instances when a municipal advisor's client has decided either not to accept, rely on or consider the municipal advisor's advice or to take an approach or position that varies (completely or partially) from advice provided by the municipal advisor. In the event of such occurrences, paragraph .03 would allow a municipal advisor to continue in its advising capacity so long as doing so would not otherwise be precluded by MSRB rules or federal, state or other laws, as applicable.

Scope of the Recommendations Analysis. Proposed section (d) and paragraph .08 of the Supplementary Material address municipal advisors' recommendations of municipal securities transactions or municipal financial products. However, as part of the duty of care articulated under proposed paragraph .01 of the Supplementary Material, a municipal advisor would be required to have a reasonable basis for any advice provided to its client.

Northland requested clarification regarding whether section (d) of the Initial Draft Rule would be applicable to all recommendations provided by the municipal advisor or only when a recommendation is related to entering into a municipal securities transaction or municipal financial product. NABL stated, in response to the First Request for Comment, that ''suitability,'' as a general matter, is a regulatory concept that could not be appropriately applied to municipal advisors in all instances. NABL suggested that a municipal advisor should be permitted to make a recommendation as to a limited aspect of the transaction, even if the municipal advisor does not agree that the transaction is suitable.

Section (d) of Proposed Rule G–42 would provide that a municipal advisor must not recommend that its client enter into any municipal securities transaction or municipal financial product unless the municipal advisor has determined, based on the information obtained through the reasonable diligence of the municipal advisor, whether the transaction or product is suitable for the client. A municipal advisor could provide advice regarding an aspect of a municipal securities transaction or municipal financial product that the municipal advisor believes to be unsuitable for its client so long as the municipal advisor adhered to the duty of care, duty of loyalty, and all other laws, as applicable, and either did not recommend the unsuitable transaction

[65] *See* SEC Rule 15Ba1–1(d)(3)(vi) (17 CFR 240.15Ba1–1(d)(3)(vi)). ''Independent registered municipal advisor'' is defined in SEC Rule 15Ba1–1(d)(3)(vi)(A) (17 CFR 240.15Ba1–1(d)(3)(vi)(A)).

[66] *See* SEC Rule 15Ba1–1(d)(3)(iv) (17 CFR 240.15Ba1–1(d)(3)(iv)).

[67] 17 CFR 240.15Ba1–1.

or product or informed the client of the basis on which the municipal advisor reasonably believed the transaction or product to be unsuitable.

Documenting Recommendations. Lewis Young expressed concern that section (d) of the Initial Draft Rule would require excessive and ''defensive'' recordkeeping and documentation in order to evidence compliance with the section's requirement that municipal advisors inform their clients of certain matters pertaining to their recommendations. Lewis Young argued that such documentation would be a ''waste of time and resources'' because the client has already determined to pursue a particular municipal securities transaction or municipal financial product. Accordingly, Lewis Young believed documenting such discussions ''so as to have a 'good answer' for the next regulatory audit'' would be overly and unnecessarily burdensome.

The MSRB believes that the proposed rule change sufficiently articulates that municipal advisors and their clients would have the discretion to define the parameters of their municipal advisory relationship and, thus, decide between them what municipal advisory activities would be performed by the municipal advisor for its client, including what matters for which a municipal advisor would be providing advice. As such, regarding the scenario proffered by Lewis Young, a municipal advisor that has not been engaged to provide advice about a municipal securities transaction or municipal financial product that was previously selected by its client would not be under an implicit obligation to provide the client with the suitability analysis described in proposed section (d) and the supplementary material. The municipal advisor would remain subject to (among other provisions of the proposed rule change) a duty of care, duty of loyalty (as applicable) and relevant supplementary material such as paragraphs .04 (Limitations on the Scope of the Engagement) and .09 (Know Your Client). Further, the MSRB believes that the documentation required by proposed Rule G–8(h)(iv) is an appropriately tailored recordkeeping requirement that will assist regulatory examiners in assessing the compliance of municipal advisors with the proposed rule change. Also, the MSRB believes the recordkeeping requirements will not be overly burdensome because municipal advisors would only be required to maintain documents created by the municipal advisor that were *material* to its review of a recommendation by another party or that memorializes the basis for any conclusions as to suitability.

Recommendations of Investment Funds. NY State Bar requested the MSRB to clarify the obligations owed by a municipal advisor to its client when the recommendation is to invest in an investment fund that is managed by a third-party advisor. NY State Bar's concern was that, under the Initial Draft Rule, a municipal advisor would be obligated to provide a recommendation, and therefore a suitability analysis, of the investment choices made by the manager of the investment fund.

Depending on the facts and circumstance of a particular scenario, such as described by NY State Bar, a municipal advisor could have a multitude of different obligations regarding its recommendation of an investment fund to a client. While the proposed rule change would allow municipal advisors and their clients to negotiate the municipal advisory activities to be performed, the standards of conduct articulated in section (a) and the relevant paragraphs of the supplementary material would not be subject to alteration. Therefore, a municipal advisor that has agreed to provide a recommendation regarding the investment in an investment fund would be required to exercise a duty of care that could, in turn, require the municipal advisor to conduct a suitability analysis that might, depending on the relevant facts and circumstance of a particular instance, require the municipal advisor to conduct a suitability analysis of the investment choices made by the manager of the investment funds. By establishing the applicable standards of conduct for municipal advisors, and providing additional guidance regarding those standards in the supplementary material to Proposed Rule G–42, the MSRB believes that municipal advisors will be able to make a determination regarding what actions they must undertake when making recommendations to clients.

Prescriptive Metrics for Suitability Analysis. In response to the First Request for Comment, MSA asked whether the MSRB would provide the ''specific metrics (standard debt issuance options)'' that should be used to determine the suitability of a recommendation. MSA also inquired into whether ''there [will] be standards set for this quantitative review or will it be the responsibility of the individual [municipal advisor] to define the suitability metrics based on the unique circumstances of each client or project?''

In order to accommodate the diversity of the municipal securities and municipal advisory marketplace, the MSRB has taken a primarily principles-based approach regarding the required suitability analysis so that municipal entities and obligated persons would receive appropriately tailored and relevant advice and recommendations from their municipal advisors. For this reason, the MSRB does not intend to provide the specific metrics requested by MSA and instead will rely upon the principles and requirements provided by the proposed rule change.

Municipal Advisor Reliance on Information Provided by Client

A number of commenters voiced apprehension regarding what they believed to be the high standard set for providing recommendations to their clients or reviewing the recommendation of a third party. Specifically, commenters expressed concern with the portion of paragraph .01 (which would be applicable to recommendations contemplated under section (d)) that would require a municipal advisor to ''undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information.'' Most commenters stated that a municipal advisor should be able to rely on the accuracy and veracity of the information provided by a client and not be required to validate such information.

Sutherland asked, in response to the First Request for Comment, in the context of 529 plans, what the Initial Draft Rule would require a municipal advisor to do in order to satisfy the proposed obligation to undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Sutherland also asked whether a municipal advisor must obtain a representation from the issuer that the information it provides does not contain any material misstatements or omissions.

In response to the Second Request for Comment, ICI stated that municipal advisors to 529 plans should not be required to verify the veracity or completeness of the information provided to them by persons who are authorized by the municipal entity client to act on behalf of a state's 529 plan.

NABL commented that a municipal advisor should be free to recommend a transaction based on facts given to it by its client, without exercising any diligence to check the facts, if consistent with the scope of the engagement with

its client. Regarding the review of recommendations of others, MSA asked whether it would be necessary to obtain documentation or information used by a third-party to make a recommendation that the municipal advisor has been engaged to review. MSA believed that the Initial Draft Rule should require the third party, who provided the recommendation and that the municipal advisor has been engaged to review, to disclose any documentation relied upon for that recommendation.

The duty of care is a core principle underlying many of the obligations of the proposed rule and is included, among other reasons, to ensure municipal entities and obligated persons are shielded from the potential negative consequences that could result from not receiving well-informed advice and expertly-executed services from their municipal advisors. The MSRB believes that requiring municipal advisors to conduct a reasonable investigation about the accuracy and completeness of the information, including information pertaining to a 529 plan, on which they will be basing their advice is necessary to ensure that clients will be able to make an informed decision based on facts and choose a prudent course of action. As stated in section (d), the municipal advisor would only need to exercise reasonable diligence, thus obviating the need for a municipal advisor to go to impractical lengths to determine the accuracy and completeness of the information on which it will be basing its advice and/or recommendation. The MSRB believes that obtaining a representation from the municipal advisor's client that the information it has provided, with no or insufficient diligence conducted by the municipal advisor, would not satisfy either section (d) or paragraph .01 of the Supplementary Material of Proposed Rule G–42 because such a representation would not sufficiently preclude the potential for the risks associated with providing advice or recommendations without a reasonable inquiry into the accuracy and completeness of the information upon which such advice or recommendations are based. While alone, such a representation would not satisfy the requirements of the proposed rule change, a municipal advisor would be free to seek and obtain such a representation as a prudent part of its process for conducting a reasonable investigation of the veracity and completeness of the information on which it is basing its recommendation.

Applicability of Suitability Analysis to 529 Plans

Several commenters raised concerns about how section (d) and the related supplementary material that address suitability analysis would generally apply to municipal advisors advising 529 plans.

ICI stated, in response to the Second Request for Comment, that the suitability standard set forth in paragraph .08 of the Supplementary Material should recognize what ICI believes to be differences between advice rendered in connection with municipal securities, generally, and that rendered in connection with 529 plans. Sutherland voiced concerns in its response to the First Request for Comment and stated that the suitability factors listed in paragraph .08 and section (d) are not workable with regard to 529 plans. ICI believed that some of the factors for determining suitability included in paragraph .08 would be ''largely irrelevant in the context of rendering advice to a 529 plan'' and the MSRB should modify the Revised Draft Rule to explicitly state that such factors would not apply to advice relating to 529 plans. In the absence of exempting 529 plans from needing to consider such factors, ICI asked the MSRB to clarify how it intends the listed factors to apply to 529 plans.

In consideration of these comments, the MSRB has modified proposed paragraph .08 (formerly paragraph .09) of the Supplementary Material to allow municipal advisors to base a suitability determination only on the listed factors that are applicable to the particular type of client being advised. The MSRB, accordingly, has inserted the phrase ''as applicable to the particular type of client'' as a qualifier to the list of factors in paragraph .08 that must be considered in a suitability analysis. The modifications proposed should address the commenters' concerns such as how factors such as ''financial capacity to withstand changes in market conditions'' would apply given that 529 plans are not dependent on external sources of revenue or funding to satisfy claims of investors. However, the listed factors in paragraph .08, consistent with the regulation of recommendations in other securities law contexts, are focused on the client and not the product involved.

Request for Clarification of Documentation and Procedural Requirements

In response to the Second Request for Comment, Piper Jaffray requested additional clarification on what a municipal advisor would need to do, and what documents would need to be created, to comply with the Revised Draft Rule's suitability requirements. Specifically, Piper Jaffray asked what the proposed rule change would require with regards to decisions that Piper Jaffray refers to as ''smaller decisions'' (*e.g.,* call features and whether to utilize a premium bond structure that has a lower yield to call).

The proposed rule change would require, pursuant to the duty of care, a municipal advisor to have a reasonable basis for any advice it provides to or on behalf of its client. Also, municipal advisors would be required to conduct a suitability analysis of recommendations of municipal securities transactions and municipal financial products that would comport with the requirements of proposed paragraph .08 of the Supplementary Material. Whether or not a suitability analysis would be required would depend, as previously discussed in Item II.A., on the facts and circumstances surrounding the communication made by the municipal advisor and whether the communication was a recommendation of a municipal securities transaction or municipal financial product. Advice as to the ''smaller decisions'' asked about by Piper Jaffray might, or might not, depending on the facts and circumstances of a particular instance, rise to the level of being a recommendation that would require a suitability analysis under the proposed rule change, even though such advice may relate to a municipal securities transaction or municipal financial product and therefore trigger other provisions of the proposed rule, because the advice might not reasonably be viewed as a ''call to action'' that would constitute a recommendation of a municipal securities transaction or municipal financial product. Note that even in the case of advice short of a recommendation, a subsequent communication that does constitute a recommendation requiring a suitability analysis might, depending on the particular facts and circumstances, require analysis at that time of a subject that was addressed in previous advice.

With regard to the recordkeeping requirements that would be required when providing a recommendation of a municipal securities transaction or municipal financial product, proposed MSRB Rule G–8(h)(iv) would require specifically that municipal advisors keep a copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the

basis for any determination as to suitability for a period of not less than five years. The MSRB believes that the proposed recordkeeping requirements will allow regulatory examiners to efficiently assess a municipal advisor's compliance with the suitability obligations of Proposed Rule G–42. The MSRB also believes that the proposed recordkeeping requirements will not overly burden municipal advisors because the MSRB understands that these documents are routinely made and retained by municipal advisors as a part of their normal business operations.

Suitability and Policy Related Considerations

In response to the First Request for Comment, BDA and Piper Jaffray stated that the factors to be considered by municipal advisors when determining whether a municipal securities transaction or municipal financial product is suitable for its municipal entity or obligated person client discussed in paragraph .08 (Suitability) of the Supplementary Material overlooks the effect that ''policy and political considerations'' could have on a suitability determination. Piper Jaffray requested that the MSRB clarify whether the determination of suitability should ''incorporate the policy directives and decisions of the issuer at the time the issue is undertaken.'' BDA requested that the MSRB clarify that, if a municipal advisor's client states its objective, the municipal advisor, in making its recommendation, does not need to assess the appropriateness of the client's stated objective but could ''generally accept the [objective].''

Section (a) and paragraph .01 of the Supplementary Material to Proposed Rule G–42 would require that municipal advisors exercise due care in performing their municipal advisory activities with respect to all of their clients. This duty would require, among other things, municipal advisors to provide their clients with informed advice. The MSRB believes that informed advice regarding the suitability of a municipal securities transaction or municipal financial product is the result of a municipal advisor making a reasonable inquiry into certain relevant information about the municipal advisor's client. For this reason, the MSRB has included in proposed paragraph .08 the requirement that a municipal advisor base its determination of suitability on any material information known by the municipal advisor after reasonable inquiry. Furthermore, proposed paragraph .09 of the Supplementary Material would obligate a municipal advisor to know and retain the essential facts concerning its client to allow the municipal advisor to effectively service the client. The MSRB believes that policy considerations could be materially relevant information under all of the particular facts and circumstances that municipal advisors may consider when determining the suitability of a municipal securities transaction or municipal financial product. A stated objective of the client as BDA posits could be made most clear by reducing it to writing and including it in the relationship documentation on the scope of the engagement.

Evidencing Evaluations and Delivery of Required Information Regarding Recommendations

Several commenters, including BDA, MSA, Northland and Lewis Young, commented on records and documentation requirements of the proposed rule change that would be applicable to municipal advisors.

In response to the First Request for Comment, BDA requested clarification regarding what books and records a municipal advisor would need to maintain to evidence evaluations or recommendations made by the municipal advisor. BDA commented that some evaluations or recommendations could be delivered orally to a client and that requiring a municipal advisor to memorialize each recommendation or evaluation in writing could prove impractical and/or costly. MSA asked, in response to the First Request for Comment, whether the information regarding recommendations and evaluations of which a municipal advisor is required to ''inform'' its client could be ''transmitted to the client orally or will each alternative require empirical evidence demonstrating the material risks, potential benefits, structure and characteristics?'' If oral transmission is acceptable, MSA then asked whether it would need to be documented by both parties. Also in response to the First Request for Comment, Northland expressed concerns regarding the Initial Draft Rule's requirement to discuss matters with the client, because it believed there is an implicit need to document these discussions therefore necessitating the use of written communications. However, Northland argued that written communications could result in a conflicting record that shows what the municipal advisor recommended as possibly in opposition to the course of action ultimately taken by its client. Northland was concerned that these potential conflicts could result in some exposure to liability in the event the justification of the decided upon course of action is challenged. Lewis Young contended that requiring municipal advisors, in section (d) of the Initial Draft Rule, to inform their clients of the risks and benefits of a particular structure or product when the client has already decided on a course of action (prior to engaging or seeking the advice of the municipal advisor) would yield little, if any, benefit. Lewis Young suggested only requiring the municipal advisor to inform its client of the matters discussed in section (d) when the client is considering, or presented with a recommendation of, a financial product, transaction or mechanism that is ''novel to the client.''

Proposed Rule G–8(h)(iv) would require a municipal advisor to maintain a copy of any document it created that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability. Section (d) of Proposed Rule G–42 would require a municipal advisor to inform its clients of the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product; the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the client; and whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives. The MSRB notes that municipal advisors, under Proposed Rule G–42, would be required to ''inform'' their clients of such matters, rather than ''discuss,'' as previously required under the Initial Draft Rule. Under Proposed Rule G–42, a municipal advisor would be allowed to choose the appropriate method in which to communicate its evaluation of the material risks and benefits attendant to the recommendation. The method selected and used by the municipal advisor must, however, comport with the duty of care and duty of loyalty (as applicable) that is owed to its client and should, therefore, result in the municipal advisor's client receiving timely, full and fair notification of the matters provided for in proposed subsections (d)(i)–(iii) and that adhere to the guidance provided in proposed paragraph .08 of the Supplementary Material.

Exemption From Suitability Standard, ''Sophisticated'' Issuers

In response to the First Request for Comment, First Southwest expressed general support for a suitability standard for recommendations by municipal advisors but stated that certain clients of municipal advisors are capable of independently evaluating recommendations of municipal advisors and these clients should be exempt from the suitability standard in a manner similar to the ''sophisticated municipal market professional'' under MSRB Rule G–48. Lamont voiced a similar concern stating that many of its ''large sophisticated'' issuer clients do not want, or need, a review of the transaction they have already decided to undertake. Lamont commented that these types of clients are ''sufficiently capable of weighing the risks in a transaction and making their own decision about whether to proceed.''

In response to the Second Request for Comment, SMA stated that when a municipal securities transaction or municipal financial product has been decided upon by a municipal advisor's client and: (a) Is related to a project or event determined by the governing body of the municipal entity or its citizens to be in its interest and consistent with its goals; (b) is permitted by state statute as determined by municipal or bond counsel; and (c) involves a transaction or product which the municipality has employed in the past, then it seems suitability has been determined and the advisor ought to be able to rely on these facts and the closing documents as establishing a reasonable basis for suitability. Southern MA suggested that a municipal advisor should not be put in the position of substituting its judgment as to the suitability of a municipal securities transaction or municipal financial product for that of the municipal policy makers, citizens or state lawmakers.

The MSRB has determined that the requirements of section (d), and the related paragraphs of the supplementary material, should be applicable regardless of the municipal advisor's perception of the sophistication of its client or the client's perception of its own degree of sophistication. The proposed rule change is aimed at protecting municipal entities, obligated persons and the public interest and, as a result, the MSRB believes that exemptions such as those described by these commenters would frustrate that objective. However, in designing Proposed Rule G–42, the MSRB did incorporate many of the concepts that commenters believed were indicia of the sophistication of an issuer into the factors to be considered when determining the suitability of a recommendation. Under those factors, the considerations proffered by SMA could be relevant to, and therefore be part of, a municipal advisor's suitability analysis depending on all of the particular circumstances, though they might not alone be sufficient to support a suitability determination under the proposed rule change.

Specified Prohibitions

Several commenters provided input on Proposed Rule G–42(e)(i), which sets forth certain activities in which municipal advisors would be prohibited from engaging.

General Comments

In response to the First Request for Comment, NAIPFA and GFOA expressed general support for the specified prohibitions, NAIPFA stated that the section includes prohibitions that are ''important measures that are needed to eliminate certain practices that often carry unmanageable conflicts of interest inconsistent with Municipal Advisor fiduciary duties,'' and the prohibitions are appropriately tailored and would not impose undue regulatory burdens. Other commenters noted their general support for the prohibitions, but suggested some revisions or limitations, which are discussed in the section below.

Cooperman commented that the MSRB should determine, after a monitoring period since the passage of the Dodd-Frank Act, what, if any, abuses or inappropriate conduct remain that would require the regulation set forth in the proposed rule change. Alternatively, Cooperman suggested that the MSRB consider, at least initially, ''limiting the [proposed rule] to an enumeration of prohibited forms of conduct and practices'' rather than imposing extensive compliance, supervision and other requirements. In response to the Second Request for Comment, Lewis Young commented that the specified prohibitions subsections (e)(i) and (ii) (on the ban of certain principal transactions) are unnecessary because the matters addressed in those sections are adequately attended to in section (a) and should be intrinsic to a reputable municipal advisor's business practices. As such, Lewis Young recommended that these prohibitions be set forth in the supplementary material in order not to detract from the focus of the proposed rule. In response to such comments, the MSRB notes that, in many respects, Proposed Rule G–42 adopts a principles-based approach, enumerating prohibited forms of conduct and practice. However, regarding certain arrangements that the MSRB has identified as particularly prone to conflict with, or risk of breach of, the fiduciary duty and duty of care, the MSRB believes that the proposed rule change appropriately incorporates more specific requirements and prohibitions.

Excessive Compensation

In response to the First Request for Comment, SIFMA, Lewis Young and MSA commented that the provision that would prohibit receiving compensation that is excessive in relation to the municipal advisory activities actually performed (now Proposed Rule G–42(e)(i)(A)), did not include a sufficiently clear standard for how excessive compensation would be determined and failed to provide adequate amount of guidance to facilitate compliance. SIFMA expressed concern that without a clear standard or more guidance, such determinations would be made in hindsight, presumably by financial regulatory examiners, and to the detriment of municipal advisors. Lewis Young called the prohibition unworkable, expressed concern that it would require advisors to document all of their work and requested that the paragraph be deleted. SIFMA and Lewis Young also commented that municipal advisor compensation is subject to market forces, and therefore its reasonableness should be determined by a negotiation between the client and the municipal advisor. PRAG stated that the proposed rule change fails to contemplate instances where transaction fees are included in a municipal advisor's compensation to compensate the municipal advisor for services that it has provided but that were unrelated to the issuance of municipal securities. SIFMA and Lewis Young asked whether the practice of including fees for services a municipal advisor provided, if not related to the issuance of municipal securities, would be permitted under the proposed rule change. Columbia Capital commented that the MSRB should strike the phrase ''whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product,'' in paragraph .10 of the Supplementary Material of Proposed Rule G–42, and add, as an additional factor to be considered when determining whether compensation is excessive, a comparison of the municipal advisor's compensation to other professionals providing services on the transaction in question.

After carefully considering the comments submitted in response to the First Request for Comment, the MSRB incorporated guidance regarding excessive compensation in paragraph .10 of the Supplementary Material of the Revised Draft Rule and solicited further comment. Paragraph .10 of Proposed Rule G–42 sets forth various factors that municipal advisors should consider when determining the reasonableness of their compensation. These factors include: The municipal advisor's expertise, the complexity of the municipal securities transaction or the financial product, whether the fee is contingent upon the closing of the transaction or financial product, the length of time spent on the engagement and whether the advisor is paying any other costs related to the transaction or financial product. Furthermore, Proposed Rule G–42 would prohibit receiving compensation that is excessive in relation to the municipal advisory activities actually performed. Depending on the facts and circumstances of a particular municipal advisory relationship, either or both of these provisions could apply to a scenario like that posited by PRAG. The proposed rule change, however, would not prescribe the source of funds that could be used to pay the municipal advisor for its services. Finally, the phrase regarding contingent fees is not deleted from paragraph .10 of the Supplementary Material as the MSRB believes it is a relevant factor and appropriately included in a non-exhaustive list of other relevant factors.

Inaccurate Invoicing

In response to the First Request for Comment, Wulff Hansen commented that the prohibition on the delivery of inaccurate invoices (now Proposed Rule G–42(e)(i)(B)) should be modified to clarify that it would apply only to any overstatements of fees, expenses or activities, and not to any fee discounting by a municipal advisor. SIFMA commented that the prohibition should stand but should be modified to add materiality and knowledge qualifiers (*i.e.,* a municipal advisor may not intentionally deliver a materially inaccurate invoice).

The MSRB believes that the proposed rule change clearly implies that offering a payment discount from the services actually performed is a permissible activity because a municipal advisor would be able to accurately describe such a discount on its invoice. In response to the SIFMA comment, the MSRB notes that the scope of inaccuracy targeted by the proposed provision is limited to the significant subjects of the services performed and personnel who performed those services, and the MSRB believes any inaccuracy in an invoice on those subjects should be proscribed. In addition, the MSRB believes that the addition to the proposed provision of the state-of-mind elements that SIFMA suggested would not sufficiently protect municipal entity and obligated person clients.

Prohibition on Fee-Splitting

The Initial Draft Rule included a prohibition on making or participating in any fee-splitting arrangement with underwriters, and any undisclosed fee-splitting arrangement with providers of investments or services to a municipal entity or obligated person client (now Proposed Rule G–42(e)(i)(D)). In response to the First Request for Comment, GFOA supported the fee-splitting prohibition in the Initial Draft Rule, noting that it ''appears to be an inherent conflict, and should be avoided.'' NAIPFA supported the prohibition, but asked the MSRB to provide a definition of ''fee-splitting arrangements,'' under which independent contractors and subcontractors would fall outside of the prohibition. Lewis Young and Winters LLC stated that fee-splitting arrangements should be disclosed but not prohibited. SIFMA commented that fee-splitting arrangements with affiliates, if fully and fairly disclosed, should be permissible. SIFMA stated that there could be legitimate reasons for such arrangements, including fee structures requested by clients of an affiliate, and, with such disclosure, the parties should be free to engage in the fee arrangement believed to be most economical and efficient under the circumstances. NABL commented that the provision appears to apply to transactions even when the advice provided is exempted or excluded from that which would cause one to be a ''municipal advisor'' under the SEC Final Rule. Based on this assumption, NABL argued that the prohibition should apply only when a municipal advisor is giving ''non-exempt'' advice as part of the same transaction, not when it is giving advice that is exempt under the SEC Final Rule.

Several commenters provided examples of fee-splitting arrangements that they believed should not be prohibited. Cooperman stated that a municipal advisor should not be prohibited from outsourcing certain parts of its municipal advisory activities to independent contractors and subcontractors, including those that may have advisors on their staffs, when payment to those third parties is not dependent upon successful conclusion of the financing or payment to the municipal advisor of its fee. In addition, Cooperman stated the fee-splitting prohibition should not prevent two advisor firms from contracting with an issuer to perform services for a predetermined fee that is disclosed to the issuer. Lewis Young, who favored disclosure of fee-splitting in lieu of a complete prohibition, wrote that municipal advisors should be permitted to enter into a fee-splitting arrangement with a structuring agent that provides specific quantitative services on a transaction. Winters LLC asserted that a municipal entity or obligated person should be able to have its municipal advisor or other professionals (including underwriters, if after the underwriting period) receive compensation from investment providers or other service providers for providing oversight and performing other services so long as there is full and fair written disclosure of the fee-splitting or sharing arrangements. Lamont stated that allowing an investment provider to pay fees related to the solicitation of the investment by the municipal advisor, and that are within the permitted limits of the Internal Revenue Service rules, should be acceptable as long as the payments are disclosed to the issuer and each investment provider on the bid list. Wulff Hansen asked whether it would be permissible under the provision for a municipal advisor to arrange for a routine purchase of services on behalf of the advised client in a transaction with an entity in which the advisor has an interest (*e.g.,* a purchase of services from DTCC when the advisor is also a DTCC Participant and thus a part owner of DTCC). Finally, Piper Jaffray requested that the MSRB clarify that the fee-splitting prohibition, with regards to underwriters, applies to ''any issue for which it is serving as municipal advisor'' because the failure to link the prohibition to the actual advisory engagement could lead to unintended and adverse consequences.

The MSRB agrees with Piper Jaffray's comment and amended the provision in the Revised Draft Rule (now Proposed Rule G–42(e)(i)(D)) to prohibit a municipal advisor from making or participating in any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice.

The MSRB believes that the proposed rule change would help prevent violations of fiduciary duties and the duty of care by clearly identifying and prohibiting specific fee-splitting

arrangements that are particularly prone to conflict with such duties. Other fee-splitting arrangements would be permitted, provided they are fully and fairly disclosed.

Payments To Obtain/Retain an Engagement To Perform Municipal Advisory Activities

In response to the First Request for Comment, NABL commented that the Initial Draft Rule G–42 should not prohibit or require the disclosure of payments made to obtain or retain municipal advisory business, if those activities are engaged in by persons exempted from registration as a municipal advisor under SEC Rule 15Ba1–1.[68] Similarly, the NY State Bar commented that the prohibition on making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities under subsection (g)(v) of the Initial Draft Rule (now proposed Rule G–42(e)(i)(E)) is unnecessarily restrictive with too narrow of an exemption. The NY State Bar stated that the provision should also permit payments to persons subject to comparable regulatory regimes (*e.g.,* banks, trust companies, broker-dealers and investment advisors) as well as to affiliates of the municipal advisor so long as, in either case, the payments are disclosed to the client. SIFMA commented that the proposed rule should allow for reasonable fees to be paid to affiliates because soliciting on behalf of affiliates does not trigger a requirement for a person to register as a municipal advisor under the SEC Final Rule. In response to the Second Request for Comment, Sanchez made a similar comment. In addition, SIFMA commented that the prohibition should not cover expenditures for normal business entertainment expenses as well as marketing and sales activities.

In light of the comments received, the MSRB modified the provision (now Proposed Rule G–42(e)(i)(E)(1)) so that it would not specifically prohibit municipal advisors from making payments to an affiliate

> for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities. . . .

The modification also would align the paragraph with Section 15B(e)(9) of the Exchange Act,[69] which allows affiliates of the municipal advisor to solicit on behalf of the municipal advisor without triggering the municipal advisor registration requirement for the affiliate. The MSRB would clarify, in proposed subparagraph (e)(i)(E)(2), that a municipal advisor may pay reasonable fees to another municipal advisor registered as such with the Commission and the Board for making a similar communication on behalf of the municipal advisor making such payments. The MSRB would also clarify, in proposed subparagraph (e)(i)(E)(3), that payments that would qualify as permissible normal business dealings under current MSRB Rule G–20 also would not violate the prohibition. The revisions would harmonize the proposed rule change with relevant federal securities laws and rules.

Additional Comments on Specified Prohibitions

BDA and Piper Jaffray suggested adding two prohibitions to Proposed Rule G–42. In response to the First and Second Requests for Comment, Piper Jaffray suggested adding a specified prohibition that would prohibit a municipal advisor from taking into account whether it competes with other firms when the advisor makes a recommendation to its client (*e.g.,* a recommendation to the client regarding which broker-dealer the client should hire as underwriter). In response to the First Request for Comment, BDA and Piper Jaffray suggested a second prohibition, which would prohibit a municipal advisor that is not also registered as, or affiliated with, a dealer, from using the term ''independent,'' if used in a manner intended to convey to potential clients that the municipal advisor is free from any potential conflicts of interest, and imply that, in contrast to advisors also registered as dealers, the municipal advisor would provide better advice. Piper Jaffray also stated that continued use of the term ''independent'' to connote an advisor free from conflicts should be specifically prohibited in light of the issues its continued use could create if market participants confused such advisors with a person acting as an ''independent registered municipal advisor'' as used in the SEC Final Rule.[70]

The MSRB has not incorporated the prohibitions suggested by BDA and Piper Jaffray. To the extent the described conduct constitutes a material misrepresentation, the MSRB believes it is already appropriately addressed by Proposed Rule G–42 and existing MSRB Rule G–17, under which municipal advisors, in the conduct of their municipal advisory activities, must not engage in any deceptive, dishonest or unfair practice with any person.

Prohibition on Principal Transactions

The MSRB received extensive comments on the proposed provision to prohibit a municipal advisor (and its affiliates) from engaging in certain principal transactions (as defined in the proposed rule) with a municipal entity client of the municipal advisor (''prohibition on principal transactions'' or ''ban''). Specifically, Proposed Rule G–42(e)(ii) generally would prohibit a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing, or has provided, advice.[71] Three related provisions of the proposed rule, subsection (f)(i) and paragraphs .07 and .11 of the Supplementary Material, would, respectively, define the phrase, ''engaging in a principal transaction,'' clarify the relationship between the proposed ban and Rule G–23, and provide guidance regarding the term ''other similar financial products'' in connection with principal transactions as defined in subsection (f)(i). Comments regarding the ban and the related provisions are discussed below.

General

In response to the First Request for Comment, many commenters raised concerns regarding: (1) The application of the ban to obligated person clients of municipal advisors; (2) the scope of the ban; (3) the meaning of ''principal transaction'' and ''principal capacity;'' (4) the ban's application to transactions by affiliates of municipal advisors; (5) the absence of an exception to the ban for an advisor or its affiliate based upon full and fair disclosure and the written consent of a client; and (6) the relationship between the ban and Rule G–23. In response to the Second Request for Comment, most of the comments focused on: (1) The scope of principal transactions that would be considered ''directly related'' to the advised transaction and come within the ban; (2) the ban's application to transactions by affiliates of municipal advisors; and (3) the relationship between the ban and Rule G–23.

[68] 17 CFR 240.15Ba1–1.

[69] 15 U.S.C. 78*o*–4(e)(9).

[70] *See, e.g.,* SEC Final Rule, 78 FR at 67471.

[71] In the Initial Draft Rule, the ban is set forth in section (f); in the Revised Draft Rule and the proposed rule change, the ban is set forth in subsection (e)(ii).

Ban Does Not Apply to Obligated Person Clients

In the Initial Draft Rule, the ban prohibited a municipal advisor and its affiliates from engaging in principal transactions with municipal entity and obligated person clients. The ban in Proposed Rule G–42(e)(ii) no longer would apply to principal transactions with obligated person clients. As a result, the comments urging that the ban not apply to obligated persons are not incorporated in this discussion, except to note that such comments were considered and the MSRB modified the proposed ban such that it would not apply to principal transactions with such persons.

Scope and ''Directly Related To''

In Initial Draft Rule G–42, the prohibition on principal transactions was significantly broader than the ban as modified in the Revised Draft Rule and as further narrowed in this proposed rule change. In the Initial Draft Rule, a municipal advisor (and its affiliates) generally were prohibited from engaging in any transaction in a principal capacity to which an obligated person client or a municipal entity client of the municipal advisor would be the counterparty. In response to the First Request for Comment, many commenters[72] interpreted the proposed prohibition quite broadly and expressed concerns regarding the scope of the proposed prohibition on principal transactions by municipal advisors (and their affiliates) with the clients of such municipal advisors.[73] Commenters, including ABA, BDA, NABL and Piper Jaffray, interpreted the ban as covering activities and transactions that were unrelated to the municipal advisory relationship. The ABA commented that ''because banks almost always provide banking products and services in a principal capacity, the prohibition would prevent commercial banks and their affiliates from providing any other banking products, such as deposit accounts, loans, or cash management services . . . despite the fact that these products and services are exempt from the municipal advisor regulatory regime.'' BDA, Frost, SIFMA and Zion, among others, raised similar concerns regarding the broad reach of the prohibition.

After carefully considering the comments, the prohibition on principal transactions was significantly narrowed and clarified, as set forth in Revised Draft Rule G–42(e)(ii). The MSRB limited the ban to ''a principal transaction *directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice''* (emphasis added). The Revised Draft Rule would thus prohibit a municipal advisor (and its affiliates) to a municipal entity client from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice. The modification was designed to exclude many of the transactions that some commenters read as potentially covered by the Initial Draft Rule, including the taking of a cash deposit or the payment by a client solely for professional services.

In response to the Second Request for Comment, some commenters supported the changes to the proposed rule text. Several other commenters continued to raise concerns regarding what they believed to be the overly broad scope of the ban. Conversely, one commenter stated that the ban in Revised Draft Rule G–42(e)(ii) had become too narrow. GFOA approved of the modification narrowing the proposed ban to ''a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice,'' and Wells Fargo noted that the modification mitigated the impact of the proposed ban. ABA also welcomed the revision, but suggested additional changes. In addition, BDA, NY State Bar, Piper Jaffray and SIFMA suggested that the ban be modified further to narrow or clarify the scope of the ban. ABA recommended that the provision require the advice provided by the municipal advisor be provided pursuant to a municipal advisory relationship; NY State Bar recommended that the prohibition not apply where the municipal advisor does not make a recommendation to the municipal advisory client to enter into a transaction with the advisor or its affiliate; and SIFMA recommended that the provision ban only those principal transactions that are directly related to the advice the municipal advisor is providing, not merely the same municipal securities transaction or municipal financial product in connection with which the advice is provided.[74] BDA and Piper Jaffray commented that the term ''directly related'' was unclear, and recommended alternative language. In Piper Jaffray's view, the ban should be limited to a transaction or issuance where a firm served as a municipal advisor and about which advice was rendered. Alternatively, Piper Jaffray suggested that the ban should cover transactions ''directly related to the advice given rather than directly related to the transaction itself.'' Applying the proposed ''directly related to'' standard to certain hypothetically paired transactions, BDA asked whether one of each pair of such transactions would be considered directly related to the second transaction and therefore subject to the proposed prohibition, and also proposed a modification to the ban.[75] Conversely, Lewis Young argued that, with the changes set forth in the Revised Draft Rule, the scope of the prohibition on principal transactions has gone from ''too broad to too narrow'' because the definition of ''engaging in a principal transaction'' (discussed in greater detail

[72] Commenters that expressed such concerns include ABA, BDA, Cape Cod Savings, Coastal, Frost, GFOA, GKB, JP Morgan, Kutak, NABL, NY State Bar, Parsons, Piper Jaffray, SIFMA and Zion.

[73] SIFMA suggested narrowing the proposed provision to:

A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction directly related to the *advice rendered by such municipal advisor* (emphasis added).

BDA suggested the following alternative:

A municipal advisor, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction with a municipal entity client if the structure, timing or terms of such principal transaction was [sic] established on the advice of the municipal advisor in connection with a municipal advisory relationship with such municipal entity client.

[74] In response to the Second Request for Comment, ABA recommended the provision be modified to read:

A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging in a principal transaction directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice *pursuant to a municipal advisory relationship.*

SIFMA recommended the provision be modified to read:

A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from knowingly engaging in a [prohibited] principal transaction.

[75] In connection with interpreting the scope of the ''directly related to'' standard, BDA asked whether: (1) Selling securities as a principal after winning a competitive bid for an open market refunding escrow on a refunding bond issue for which the firm was a municipal advisor would be a transaction ''directly related to'' the refunded bond issue and therefore a prohibited principal transaction; (2) acting as the underwriter on a series of variable rate bonds would be directly related to acting as the municipal advisor for a related swap, and be prohibited; and, (3) underwriting a refunding issue years after serving as a municipal advisor for the initial issue would be a transaction that would be considered directly related to the initial issue and prohibited.

BDA recommended the provision be modified to delete the ''directly related to'' standard and substitute: ''if the structure, timing or terms of such principal transaction was established on the advice of the municipal advisor in connection with a municipal advisory relationship with such municipal entity client.''

below) does not extend fully to the variety of principal transactions in which a municipal advisor could engage, which would be in conflict with its municipal advisory role and fiduciary duty (*e.g.,* a bank loan as a substitute for an issuance of municipal securities).

The principal transactions ban is incorporated in the proposed rule change as Proposed Rule G–42(e)(ii). The MSRB has determined not to narrow, broaden or otherwise modify the standard—''directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing advice''—in response to the comments received. The MSRB believes that the various alternative rule texts proposed by commenters would not be more effective or efficient means for achieving the stated objective of Proposed Rule G–42(e)(ii), which is to eliminate a category of particularly acute conflicts of interest that would arise in the fiduciary relationship between a municipal advisor and its municipal entity client. The alternatives offered by various commenters are similar in that they would seek to limit the scope of prohibited transactions to those pertaining to the advice rendered by the municipal advisor. If adopted, such a change could leave transactions that have a high risk of self-dealing insufficiently addressed. For example, a municipal advisor that provided advice to a municipal entity regarding the timing and structure of a new issuance arguably would not be prohibited from acting as principal in entering into an interest rate swap for the same issuance so long as the advisor refrained from advising on the swap. In addition, in response to the comments that the standard would continue to raise questions whether a transaction was prohibited under Proposed Rule G–42(e)(ii) and the suggestion that the MSRB further amend the provision to clarify the provision, the MSRB does not believe it would be feasible or desirable, given the principled nature of the provision, to specify in advance its application in all circumstances. As noted above, the proposed principal transactions ban is revised to clarify that the prohibition applies both to principal transactions that occur while the municipal advisor is providing advice with respect to a directly related municipal securities transaction or municipal financial product, and after the municipal advisor has provided such advice.

''Engaging in a Principal Transaction'' and ''Other Similar Financial Products''

In response to the First Request for Comment, certain commenters, including GFOA, NAIPFA, SIFMA and Wulff Hansen, commented that the MSRB should provide additional guidance regarding the meaning of various terms (*e.g.,* ''principal capacity'' and ''principal transaction'') for purposes of interpreting the proposed prohibition on principal transactions. Several commenters, including GFOA, Wulff Hansen and First Southwest, sought clarification regarding the types of transactions that would constitute principal transactions. For example, the GFOA requested that the MSRB provide examples of prohibited and acceptable practices; Wulff Hansen asked that the MSRB specify whether the sale of other additional municipal advisory or related services would constitute a prohibited principal transaction; and First Southwest asked whether a municipal advisor that also facilitates private placements would be engaged in a principal transaction.

In response to comments, the Revised Draft Rule G–42(f)(i) added, for purposes of the Revised Draft Rule, a defined term, ''engaging in a principal transaction'' to mean: ''when acting as principal for one's own account, selling to or purchasing from the municipal entity client any security or entering into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.''

In response to the Second Request for Comment, ABA and GFOA expressed support for the proposed defined term. Another commenter, Sanchez, asked the MSRB to include a non-exhaustive list of specific common roles (such as underwriter) in addition to the general description. NY State Bar recommended two significant changes intended to narrow the scope of the prohibition and the definition of principal transaction: (1) The ''somewhat open-ended'' phrase ''other similar financial product'' should be amended to refer exclusively to municipal financial products, as defined in the Exchange Act; and (2) the definition of ''engaging in a principal transaction'' should be amended to make clear that the term does not include any of the banking activities as to which a bank may provide advice without being registered as a municipal advisor pursuant to the exemption in the SEC Rule 15Ba1–1(d)(3)(iii),[76] including holding investments in a deposit or savings account, certificate of deposit or other deposit instrument issued by a bank; extensions of credit by a bank to a municipal entity or obligated person, including the issuance of a letter of credit; the making of a direct loan, or the purchase of a municipal security by the bank for its own account; holding funds in a sweep account; or investments made by a bank acting in the capacity of an indenture trustee or similar capacity.

In response to comments filed regarding the Second Request for Comment, including Lewis Young's, the proposed rule would provide additional guidance regarding the term, ''other similar financial products.'' Proposed Supplemental Material paragraph .11 would provide that, as used in Proposed Rule G–42(f)(i), ''other similar financial products,'' ''includes a bank loan, but only if it is in an aggregate principal amount of $1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.'' The MSRB notes that the term ''other similar financial products'' is not limited to refer exclusively to municipal financial products, as defined in the Exchange Act, in that a fiduciary's obligation to its client—not to engage in principal transactions in which the fiduciary's financial interests and concerns conflict with those of the client—is not so limited. For the same reason, the MSRB has determined not to limit the scope of banned transactions, which are covered based generally on conflicts principles, to the category of transactions as to which advising triggers a registration requirement as a municipal advisor.

Exceptions to Ban

In the First Request for Comment, the MSRB specifically sought comments on whether a ban on principal transactions by municipal advisors was the appropriate regulatory approach, or whether a municipal advisor should be permitted to engage in certain types of principal transactions with its client, with full and fair disclosure and written client consent, and, if so, what types of principal transactions should be allowed.

In response to the First Request for Comment, several commenters, including ABA, First Southwest, Frost, GKB, Kutak, JP Morgan, NABL and SIFMA, expressed concerns regarding what they viewed as the overly broad prohibition on principal transactions between municipal advisors and their clients. Several commenters, including the ABA, Cape Cod Savings, Frost, NABL, SIFMA and Zion, stated that the prohibition could do a disservice to municipal entities by unnecessarily and

[76] 17 CFR 240.15Ba1–1(d)(3)(iii).

substantially restricting the choices available to municipal entities that engage their municipal advisors (or their affiliates) in other types of transactions that would be prohibited by the Initial Draft Rule. In addition, several commenters, including ABA, Kutak, NABL, Parsons, SIFMA, Sutherland and Wells Fargo, believed that a municipal advisor should be permitted to engage in certain types of principal transactions with its clients if the municipal advisor provides its client with full and fair disclosure and then receives informed consent from the client. NABL stated that the proposed ban would conflict with common law, under which an agent's fiduciary duties of loyalty and care could be waived or otherwise modified by the principal if the principal is not legally incompetent. Kutak commented that the Initial Draft Rule should not prohibit all principal transactions with municipal entities when the client is sufficiently sophisticated to adequately assess the risks of the transactions. Kutak believed transactions involving an investment in an instrument where an established market exists and a municipal entity client could readily ascertain the reasonableness and fairness of the price should be allowed under the Initial Draft Rule.

Also, multiple commenters, including ABA, Kutak, NABL and SIFMA (in response to the First Request for Comment) and FSR and Zion (in response to the Second Request for Comment), noted that under Section 206(3) of the Investment Advisers Act and other regulatory regimes, certain principal transactions are permitted based upon full and fair disclosure and client consent.[77] The commenters suggested that a similar mechanism should be included in the ban that would allow municipal advisors to engage in principal transactions with their municipal entity clients, subject to similar disclosure and consent requirements. NABL also commented that, if the MSRB adopted a provision that was consistent with the SEC's guidance under the Investment Advisers Act regarding an exception to a ban based on disclosure and informed consent, the MSRB should provide clear guidance to market participants to avoid confusion.

In contrast, commenters Lewis Young and NAIPFA supported the proposed ban on principal transactions and did not recommend creating exceptions or narrowing its scope. Lewis Young commented that the ban was appropriate, stating that a party cannot be both a fiduciary and a principal party in a buyer/seller relationship if the sale is an asset, financial product or something other than services that are compatible with the fiduciary role.

The MSRB carefully considered the comments received that urged the MSRB to include one or more exceptions to the prohibition on principal transactions. After considering the fiduciary duty of the municipal advisor in its relationship to a municipal entity client and the possibilities for self-dealing, the MSRB believes that the proposed prohibition on principal transactions is sufficiently targeted and should be retained. In addition, the MSRB believes that exceptions to the prohibition based on disclosure and client consent, even if limited to sophisticated municipal entities, would not sufficiently protect municipal entity clients from potential self-dealing-related abuses. The prohibition has been narrowed to ban only those transactions that (1) are ''directly related'' to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice and (2) are purchases or sales of a security or involve entering into a derivative, guaranteed investment contract, or other similar financial product with the municipal entity client (as discussed, *supra*). In the MSRB's view, the prohibition on principal transactions should not at this juncture be modified or narrowed, given the acute conflicts of interest presented and the risk of self-dealing by a regulated entity (or its affiliate).[78]

Affiliates

In response to the First Request for Comment, a number of commenters commented on the ban's coverage of principal transactions by affiliates of a municipal advisor, including ABA, Frost, JP Morgan, Parsons, Piper Jaffray, SIFMA, Wells Fargo and Zion.

The ABA, SIFMA and other commenters commented generally that other fiduciary regimes do not prohibit all affiliates of a fiduciary from engaging in principal transactions with the party owed the fiduciary duty. Wells Fargo also sought to limit the coverage of the ban, commenting that the ban should not apply to certain affiliates. In Wells Fargo's view, affiliates of large financial institutions often offer substantially different services, operate with distinct governance structures and employ information barriers, and, in such instances, if a non-municipal advisor affiliate is not connected to the municipal advisor relationship, the risk of a conflict of interest in a principal transaction between a municipal advisor client and the non-municipal advisor affiliate is significantly diminished. Wells Fargo suggested that the MSRB not apply the ban to affiliates or, at a minimum, limit the ban to principal transactions of affiliates that are directly related to the municipal advisory relationship that the municipal advisor affiliate has with the client. ABA, NABL, SIFMA, Wells Fargo, Zion and other commenters generally expressed concerns related to regulating conduct of affiliates of municipal advisors, specifically the imposition of compliance burdens on the affiliates and possible unintended consequences to clients if certain products and services offered by affiliates of the municipal advisor were no longer available to clients. ABA and NABL commented that the MSRB does not have apparent authority to regulate the conduct of affiliates of municipal advisors that are not brokers, dealers or municipal securities dealers, and thus, any ban should be narrowly-tailored and addressed to the municipal advisor's right to advise, rather than its affiliates' rights to engage in unrelated transactions.

In response to the Second Request for Comment, ABA, FSR, SIFMA and Wells

[77] *See* 15 U.S.C. 80b–6 and the rules adopted thereunder, which prohibit an adviser, acting as a principal for its own account, from knowingly selling any security to or purchasing any security from a client for its own account, without disclosing to the client in writing the capacity in which it (or an affiliate) is acting and obtaining the client's consent before the completion of the transaction.

SIFMA also referred to the regulation of swap dealers and security-based swap dealers that also serve as advisors to Special Entities (which includes municipal entities) under the CEA. *See* 7 U.S.C. 1 *et seq.* According to SIFMA, the CEA does not preclude such advisors from entering, in a principal capacity, into derivatives transactions with the Special Entities that they advise, including municipal entities, subject to the duty of the advisor to act in the best interests of the Special Entity.

[78] Similar concerns regarding conflicts of interests arising when a regulated entity would provide financial advice to a municipal issuer and also serve as underwriter were raised by the MSRB and commenters in connection with SR–MSRB–2011–03, a proposed rule change to amend MSRB Rule G–23 relating to the activities of financial advisors, which was approved by the Commission. *See* Exchange Act Release No. 64564 (May 27, 2011), 76 FR 32248, 32249 (June 3, 2011) (order approving File No. SR–MSRB–2011–03) (''[T]he proposed rule change resulted from a concern that a dealer financial advisor's ability to underwrite the same issue of municipal securities, on which it acted as financial advisor, presented *a conflict that is too significant for the existing disclosure and consent provisions of Rule G–23 to cure.* Even in the case of a competitive underwriting, the perception on the part of issuers and investors that such a conflict might exist was sufficient to cause concern that permitting such role switching was not consistent with 'a free and open market in municipal securities' '' (emphasis added)).

Fargo included significant comments that focused on the ban's application to transactions by affiliates. With respect to affiliates, among the concerns raised was the difficulty that municipal advisors and their affiliates might have in identifying transactions that are related to an advised transaction, particularly within large organizations, and the likely significant cost of compliance.

Commenters, such as SIFMA and Wells Fargo, also questioned the value of extending the prohibition to affiliates of a municipal advisor, stating that, in scenarios where the affiliate has no knowledge of the municipal advisory relationship, or where the municipal advisor has no knowledge of an affiliate's contemplated principal transaction, the parties would not be likely to engage in self-dealing or profit from the affiliation.

SIFMA suggested that the MSRB include the emphasized modifier in subsection (e)(ii) as follows: ''A municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from *knowingly* engaging in a principal transaction. . . .'' (emphasis added), which is the same modifier contained in the provision on principal transactions in the Investment Advisers Act.[79] Wells Fargo suggested a modification to exempt municipal advisor affiliates operating with information barriers, stating that such entities are unlikely to engage in the self-dealing that the rule is aimed at preventing.

After considering the fiduciary duty of the municipal advisor in its relationship to a municipal entity client and the risk of self-dealing, the MSRB believes that the proposed prohibition on principal transactions, including its application to affiliates, is sufficiently targeted. In the MSRB's view, the proposed prohibition should be retained without exceptions, including one based on disclosure and consent, for the reasons set forth above, given the acute nature of the conflicts of interest presented and the risks of self-dealing by affiliates in transactions that are ''directly related'' to the same municipal securities transaction or municipal financial product as to which the affiliated municipal advisor is providing or has provided advice. Significantly, the prohibition is limited to certain types of transactions (*i.e.,* purchases or sales of a security or those involving entering into a derivative, guaranteed investment contract, or other similar financial product). Finally, in connection with affiliates, if the prohibition on principal transactions were modified by ''knowingly,'' the MSRB believes the standard would be overly stringent, which could hinder regulatory examinations and enforcement.

Relationship Between the Ban and Rule G–23

In the First Request for Comment, the ban prohibiting municipal advisors (and their affiliates) from engaging in principal transactions with the municipal advisor's clients included the exception: ''Except for an activity that is expressly permitted under [MSRB] Rule G–23'' (''Rule G–23 exception''). The Rule G–23 exception was included to address the interrelationship between the proposed specific prohibition on principal transactions in Initial Draft Rule G–42 and principal transactions that are permitted by underwriters under Rule G–23.

Commenters sought clarity regarding the relationship between Rule G–23 and the prohibition on principal transactions in the Initial Draft Rule. In response to the First Request for Comment, commenters asked whether the prohibition on principal transactions was in conflict with principal transactions discussed in Rule G–23, under which a municipal advisor could acquire, as a principal, all or any portion of an issuance of municipal securities for which the municipal advisor had provided advice, as long as the municipal advisor complied with Rule G–23. BDA and GKB noted that, although the provision in the proposed ban referenced an exception for activities that are expressly permitted under Rule G–23, it was unclear what principal transactions would be permitted. Lamont commented that MSRB rules applicable to municipal advisors should not conflict with MSRB rules applicable to dealers regarding principal transactions, observing that, in its view, a fiduciary duty to the issuer will require additional steps to ensure that the pricing has been at least as favorable as having a third party in the transaction.

After careful consideration of the comments, the MSRB developed the Revised Draft Rule to clarify the relationship between the proposed ban on principal transactions and those principal transactions currently permitted under Rule G–23. Specifically, paragraph .07 to the Supplementary Material of the Revised Draft Rule described the Rule G–23 exception to the ban, providing that subsection (e)(ii) would not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities, provided that the municipal advisor complied with the requirements of Rule G–23. Thus, the Rule G–23 exception was more clearly described using the particular terminology in Rule G–23, rather than solely cross-referencing Rule G–23.

Several of the comments received in response to the Second Request for Comment continued to seek clarification regarding the Rule G–23 exception, desiring to avoid confusion regarding any express and direct conflict between the ban and Rule G–23. GFOA sought additional amendments to paragraph .07 of the Supplementary Material, seeking to ''ensure that no component of a final Rule on G–42 removes the authority of issuers to decide for themselves how they utilize a [municipal advisor] or underwriter on a transaction so long as compliance with MSRB Rule G–23, MSRB Rule G–42 and the SEC's Municipal Advisor Rule are maintained.'' In BDA's view, the Revised Draft Rule language did not clarify the provision compared with the prior language regarding when a municipal advisor could act as a principal on the same transaction for which it is providing advice.

Sanchez appeared to interpret the provision to mean that a transaction permitted by Rule G–23 would be deemed in all cases to be lawful vis-a-vis other requirements under proposed Rule G–42 (such as the duty of loyalty) and under other laws (such as the statutory fiduciary duty). Columbia Capital commented that the sentence regarding the Rule G–23 exception in paragraph .07 of the Supplementary Material should be deleted because it ''contemplates a situation where an MA could serve as a principal in a transaction for which it provides MA services, creating a conflict'' with the proposed prohibition on principal transactions. Finally, ABA commented that the clarification regarding the conflict between Rule G–23 and draft Rule G–42(e)(ii) is unnecessary, or, if the clarification is retained, the phrase, ''provided that the municipal advisor complies with all of the provisions of Rule G–23,'' should be deleted and the phrase, ''provided that such a transaction is not prohibited by the provisions of Rule G–23,'' should be incorporated.

The MSRB notes that the purpose of the sentence regarding the Rule G–23 exception in paragraph .07 of the Supplementary Material is to avoid a potential inconsistency in the MSRB's

[79] *See* 15 U.S.C. 80b–6(3).

rules by providing specifically in Proposed Rule G–42, until such time as the MSRB may further review and potentially revise Rule G–23, that the specific ban on principal transactions in proposed subsection (e)(ii) does not prohibit a type of principal transaction that is already addressed and prohibited to a certain extent by Rule G–23. To further clarify this point, and respond to the comment by ABA, the MSRB has deleted the phrase ''provided that the municipal advisor complies with all the provisions of Rule G–23'' from the end of paragraph .07, and substituted the phrase ''that is a type of transaction that is addressed by Rule G–23.'' Also, in response to the comments requesting additional clarification, the MSRB has included the phrase ''on the basis that the municipal advisor provided advice as to the issuance.'' Proposed paragraph .07 of the Supplementary Material, as revised, would provide:

> In addition, the specific prohibition in subsection (e)(ii) . . . shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities *on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G–23* (emphasis added).

The MSRB cautions that this provision is quite limited, providing an exception only to the specific prohibition in subsection G–42(e)(ii); and it would not mean, for example, that a transaction not prohibited by Rule G–23 is deemed in all cases to be lawful vis-a-vis all other requirements under Proposed Rule G–42 (such as the duty of loyalty) and under other laws (such as the statutory fiduciary duty).

Inadvertent Advice—Supplementary Material .06

In response to the Second Request for Comment, several commenters expressed concerns and suggested changes to the inadvertent advice exclusion in paragraph .06 of the Supplementary Material to the Revised Draft Rule. First, NAIPFA believed the paragraph impermissibly creates an additional exemption from the Commission's definition of the term ''municipal advisor'' and is inconsistent with Rule G–23, allowing broker-dealers to provide advice to municipal entities and obligated persons as municipal advisors without becoming subject to corresponding fiduciary responsibilities and ultimately allowing such municipal advisors to serve as underwriters of the securities being issued. Similarly, WM Financial believed paragraph .06 negated Rule G–23 and effectively allowed broker-dealers to serve as municipal advisors and then switch to serving as underwriters, undermining the definition of ''municipal advisor'' and the exemptions thereto provided by the SEC. Contrary to NAIPFA and WM Financial, Sanchez stated that ''it appears reasonably clear at the moment that Supplementary Material .06 is only intended to provide relief from subsections (b) and (c) of Proposed Rule G–42;'' however, he believed it would be useful for the MSRB to also include an affirmative statement that even inadvertent advice is subject to all other rules and requirements applicable to municipal advisory activities and financial advisory relationships entered into by broker-dealers under Rule G–23, Commission rules, and the fiduciary duty set forth in the Exchange Act.

NAIPFA and WM Financial misinterpreted the safe harbor provided by paragraph .06 as broadly relieving a municipal advisor of other regulatory requirements. To address such confusion, the MSRB has revised paragraph .06 of the Supplementary Material to include a clarifying statement that the relief the paragraph provides ''has no effect on the applicability of any provisions'' of Proposed Rule G–42, other than sections (b) and (c) (relating to documentation of the municipal advisory relationship and the disclosure of conflicts of interest, respectively) or any other legal requirements applicable to municipal advisory activities, which would include, but are not limited to, SEC rules and Rule G–23.

Second, SIFMA suggested that the MSRB broaden the limited safe harbor provided by paragraph .06 to relieve municipal advisors that inadvertently engage in municipal advisory activities from compliance with section (d) and subsection (e)(ii) of the Revised Draft Rule. Section (d) would require a suitability analysis of recommendations made by the municipal advisor or by a third party while subsection (e)(ii) would prohibit principal transactions directly related to the same municipal securities transaction or municipal financial product as to which the municipal advisor is providing or has provided advice. The MSRB believes that, despite inadvertently engaging in municipal securities activities, a municipal advisor should not be relieved of complying with the suitability analysis requirement to the extent the municipal advisor made or reviewed a recommendation as contemplated by Proposed Rule G–42(d). Further, the MSRB does not believe, as SIFMA suggested, that firms would be less likely to perform the disclaimer process under paragraph .06 because doing so would not permit them to engage in a principal transaction prohibited under Proposed Rule G–42(e)(ii). Specifically, use of the exemption under paragraph .06 would only relieve a municipal advisor of compliance with the requirements of Proposed Rule G–42(b) and (c), and the prohibition on principal transactions would apply to the municipal advisor regardless. Therefore, the MSRB has not revised paragraph .06 in response to these comments.

Third, NAIPFA highlighted the importance of prompt use of the safe harbor provided by paragraph .06, suggesting that the proposed rule require utilization within ten days of discovery of the inadvertent advice. The MSRB has not prescribed a strict time frame for when the documentation must be provided by the municipal advisor beyond the general ''promptly'' standard, as doing so would create an arbitrary bright line that would be of limited benefit to municipal advisors or their clients. In response to the comment and to ensure that municipal advisors seeking to obtain the relief provided under paragraph .06 do so in a timely manner after having discovered that they inadvertently provided advice, the MSRB modified paragraph .06 to require municipal advisors to provide the documentation it prescribes ''as promptly as possible *after discovery''* (emphasis added).

Fourth, SIFMA noted that there are circumstances in which a registered municipal advisor could be engaged in municipal advisory activities for some clients, but inadvertently provide advice to another client, and, therefore, could not state that it ''has ceased engaging in municipal advisory activities'' to comply with paragraph .06. In response to the comment, the MSRB has revised the disclaimer required by subparagraph (a) of paragraph .06 of the Supplementary Material to state that, effective immediately, the municipal advisor has ceased engaging in municipal advisory activities ''*with respect to that municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided* . . . .'' (emphasis added). This revision would clarify that the municipal advisor is not required to cease *all* municipal advisory activities to obtain the relief provided by paragraph .06.

Fifth, NAIPFA highlighted the importance of the identification of the

inadvertent advice, suggesting requiring the identification of absolutely *all* of the inadvertent advice. In response to this comment, the MSRB revised subparagraph (c) of paragraph .06 to require that the municipal advisor identify all of the advice that was provided inadvertently, based on a reasonable investigation. This objective standard for the investigation would avoid requiring municipal advisors to go to impractical lengths to ensure that all inadvertent advice was identified, and the MSRB believes this would be sufficient to allow municipal advisor clients to assess risk exposure from any reliance on the advice and determine what potential mitigating actions need to be taken.

Finally, SIFMA suggested that the MSRB should carve out an exception for all advice that is incidental to brokerage/securities execution services. In the MSRB's view, SIFMA's request, as noted above, is a request that the MSRB interpret the SEC Final Rule and the definition of ''municipal advisor,'' therein. The authority to interpret the Commission's rule lies with the Commission and the request should be directed to the Commission. As such, the MSRB declines to revise paragraph .06 of the Supplementary Material in this manner.

Trigger for Municipal Advisor Relationship

Subsection (f)(vi) would define ''municipal advisory relationship'' for purposes of Proposed Rule G–42 and states that a municipal advisory relationship will ''be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person.'' In response to the Second Request for Comment, Columbia Capital objected to the deletion of ''engages'' from the definition of ''municipal advisory relationship'' in subsection (f)(vi) of the Revised Draft Rule. Specifically, Columbia Capital stated that, ''[i]f a person provides 'advice' he/she should trigger the [municipal advisor] duties at the time of providing that advice and should be considered [a municipal advisor] unless that person qualifies for an exemption or exclusion at the time such advice is provided.'' Under the proposed rule change, the municipal advisory relationship would begin at the time a municipal advisor enters into an agreement to engage in municipal advisory activities, which then triggers the documentation requirements of Proposed Rule G–42(c).

The MSRB believes Columbia Capital's concern is moot because the other duties required by Proposed Rule G–42, including, but not limited to, providing written disclosures to clients, would be triggered when a municipal advisor engages in municipal advisory activities. The MSRB also notes that engaging in municipal advisory activities would subject a firm to municipal advisor registration requirements and any other legal requirements applicable to municipal advisory activities. Accordingly, the MSRB has not revised subsection (f)(vi) of the Revised Draft Rule, as incorporated into the proposed rule, in response to this comment.

Economic Analysis of Comments on Economic Implications of Proposed Rule

Economic Analysis—Cost of Compliance

Several commenters stated that the cost of complying with the proposed rule would be ''burdensome'' or ''significant.'' In some cases, commenters identified alternative approaches that they considered to be less costly. No commenter provided specific cost information or data that would support an improved estimate of the costs of compliance.

FSR and SIFMA both stated that the requirement on municipal advisors to provide disclosure of all material conflicts of interest including any of its affiliates that provides any advice, service, or product directly or indirectly related to performing municipal advisory activities would be burdensome, particularly for municipal advisors that are part of large financial conglomerates. Sanchez commented that a ''written statement'' would be less burdensome than ''written documentation'' when municipal advisors conclude that material conflicts of interest exist. FSR, SIFMA, and Sanchez commented that the detailed disclosure of disciplinary events material to the client's evaluation of the municipal advisor could be accomplished at a lower cost by allowing municipal advisors to reference the documentation provided to the SEC on Forms MA and MA–I. Columbia Capital requested that the MSRB consider allowing municipal advisors to use more than one document to meet the requirement for documentation of the municipal advisory relationship.

The MSRB agrees that municipal entities and obligated persons can be made aware of relevant conflicts of interest at a lower cost by revising some of the requirements. To that end, the MSRB amended Proposed Rule G–42(b)(i)(A) to narrow the scope of potential conflicts that would need to be disclosed from those that ''might'' impair the advisor's ability to provide advice to those that ''could reasonably be anticipated to impair'' the advisor's ability and Proposed Rule G–42(b)(i)(B) to remove the requirement to disclose potential conflicts that might arise from advice, service, or products provided by affiliates and *indirectly* related to the performance of municipal advisory activities. The MSRB also amended Rule G–42(b)(i) to allow for a written statement instead of written documentation if a municipal advisor concludes that no known material conflicts of interest exist. The MSRB also agrees that information regarding disciplinary events may be disclosed by identification of the specific type of the event and specific reference to the relevant portions of Forms MA and MA–I and has amended Proposed Rule G–42(b)(ii) to reflect this. Finally, the MSRB has clarified that a municipal advisor may use multiple documents to document the relationship by adding the plural ''writings'' to Proposed Rule G–42(c).

Economic Analysis—Transition Period

Lewis Young urged the MSRB to adopt a transitional period to permit advisors to honor their existing financial advisory agreements. They stated that many financial advisory agreements are longer-term arrangements and that advisors should be provided with a reasonable opportunity to conform existing arrangements to the requirements of the proposed rule when they are renewed or after a reasonable phase-in period after the rule is finalized. Zion also urges the MSRB to include a transitional provision to permit advisors to honor existing contracts, including many that are multi-year contracts. Zion notes the significant time, effort, and expense that would be involved to supplement or amend existing contracts with additional content and disclosure required by the proposed rule. Zion states that under particular state and/or local procurement laws, the alterations to existing agreements may reopen the request for proposal process for issuers to hire municipal advisors, requiring additional (and significant) time, effort, and expense.

The MSRB believes that the required disclosure can generally be accomplished without formal amendments and, therefore, that the costs imposed will be less significant than generally anticipated.

Economic Analysis—Burden on Small Municipal Advisors

MSRB did not receive any comments specific to the Dodd-Frank Act requirement that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud.[80]

Nonetheless, the MSRB has been sensitive to the potential impact of the requirements contained in Proposed Rule G–42. To that end, the MSRB has made efforts to minimize costs, particularly those that might be expected to disproportionately impact smaller firms. In addition to the amendments discussed above that will reduce compliance costs, the MSRB has made changes to proposals included in prior Requests for Comment such as clarifying the obligations owed by municipal advisors to obligated persons, narrowing the circumstances under which disclosures related to the municipal advisory relationship and compensation arrangements need to be made, and removing disclosure requirements related to professional liability insurance.

The MSRB acknowledges that there will be costs associated with complying with this proposed rule and that some municipal advisors, including smaller firms, may exit the market as a result. However, the MSRB believes the costs and burdens are limited to those necessary to meet the objectives of the rule, consistent with its statutory basis.

[80] *See* 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2015–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2015–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; 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–MSRB–2015–03 and should be submitted on or before May 29, 2015.

For the Commission, pursuant to delegated authority.[81]

Brent J. Fields,

Secretary.

[FR Doc. 2015–11054 Filed 5–7–15; 8:45 am]

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[81] 17 CFR 200.30–3(a)(12).

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Part IV

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Part 4284
Value-Added Producer Grant Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0570–AA79

Value-Added Producer Grant Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Final rule; request for comment.

SUMMARY: The Rural Business-Cooperative Service (Agency) is publishing this final rule for the Value-Added Producer Grant (VAPG) program. This final rule modifies the interim rule for VAPG based on comments received on the interim rule, which was published on February 23, 2011, on the Agricultural Act of 2014 (2014 Farm Bill), and on a listening session, held on April 25, 2014, on the VAPG provisions in the 2014 Farm Bill.

Under the final rule, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program also provides working capital for expenses such as implementing an existing viable marketing strategy.

The program provides a priority for funding for applicants that are Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, operators of Small- and Medium-sized Family Farms and Ranches, Farmer and Rancher Cooperatives and applicants that propose a Mid-Tier Value Chain project. Additional priority points will be given to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects ''best contribute'' to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches. Further, it creates two reserved funds, each of which will include 10 percent of program funds each year, for applications that support opportunities for Beginning and Socially-Disadvantaged Farmers and Ranchers and for proposed projects that develop mid-tier value marketing chains.

DATES: *Effective Date:* This final rule is effective May 8, 2015.

Comments Due Date: Written comments on this rule must be received on or before July 7, 2015.

ADDRESSES: You may submit comments on this final rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: USDA, Rural Development, Rural Business-Cooperative Service, Room 4008, South Agriculture Building, Stop 3253, 1400 Independence Avenue SW., Washington, DC 20250–3253, Telephone: (202) 690–1376, Email *CPGrants@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

This action is needed in order to implement the final rule for the Value-Added Producer Grant (VAPG) program. This final rule modifies the interim rule for VAPG based on comments received on the interim rule, which was published on February 23, 2011 (76 FR 10122), on the Agricultural Act of 2014 (2014 Farm Bill), and on a listening session, held on April 25, 2014, on the VAPG provisions in the 2014 Farm Bill. This action addresses these modifications, as well as a number of program clarifications, including but not limited to, allowing seafood producers to be able to apply under the locally-produced value-added agricultural product methodology and eligibility for tribal entities. Finally, this action gives the State Director discretion to award priority points in the event that the VAPG program is State-allocated in accordance with 7 CFR 1940.593.

II. Summary of the Major Provisions

1. Program. Section 6203 of Agricultural Act of 2014, Public Law 113–79 provides priority for funding applicants that are Veteran Farmers and Ranchers. It further provides additional priority points for Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects ''best contribute'' to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches.

2. Applications. Applicants must meet all program eligibility and evaluation requirements to be considered for funding. To be eligible to compete for reserved funding and/or receive priority points in the scoring process, applicants must include additional information in their grant application for their respective priority or reservation category (Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, operators of Small- and Medium-sized Family Farms and Ranches, Farmer and Rancher Cooperatives, Mid-Tier Value Chain projects, and projects that 'best contribute' to new or expanded marketing opportunities for Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, or operators of Small-and Medium-sized Family Farms and Ranches) in accordance with the VAPG program regulation and any additional guidance provided in the annual solicitation for the program.

3. Scoring applications. The Agency will score applications based upon the VAPG program regulation and any additional guidance provided in the annual solicitation for the program. Priority points will be awarded based on the applicant's qualification as one of the identified priority categories. Additional priority points will be awarded to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures who can demonstrate, based on their current and projected composition of owners/membership, how their project ''best contributes'' to creating or increasing marketing opportunities for Beginning Farmers and Ranchers, Veteran Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and operators of Small- and Medium-sized Family Farms and Ranches. Any reserve funds not

obligated by June 30th will roll into the general program fund. Applications will be awarded in rank order until funds are expended or the minimum score threshold under the annual solicitation is reached.

III. Costs and Benefits

The Agency estimates the cost to complete an application to be approximately $2,405, with changes resulting from this action estimated to amount to $70. The Agency has identified potential offsetting benefits to prospective program participants and the Agency that are associated with this action. The primary benefit of this action is improving the availability of funds to help agricultural producer applicants in general, and priority category applicants in particular, to expand their customer base for the products or commodities that they produce.

Comments: While comments on the interim rule have been considered, we are issuing this final rule without opportunity for prior notice and comment on the changes made to implement the 2014 Farm Bill. The Administrative Procedure Act exempts rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' from the statutory requirement for prior notice and opportunity for comment. 5 U.S.C. 553(a)(2). However, we invite you to participate in this rulemaking by submitting written comments, data, or views before the noted deadline. We will consider the comments we receive and may conduct additional rulemaking based on the comments.

Executive Order 12866

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget (OMB).

Unfunded Mandates Reform Act

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

This final 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This final rule has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with NEPA of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under EO 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under EO 13132, Federalism, that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies, that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities for the reasons discussed below. This regulation only affects agricultural producers that choose to participate in the program. The Agency estimates that approximately 75 percent of the agricultural producers (operators of Family Farms and beginning and Socially-Disadvantaged applicants) that utilize the program are considered small entities, as defined by the Regulatory Flexibility Act. Therefore, the Agency has determined that this final rule will have an impact on a substantial number of small entities.

However, the economic impact of this final rule on small entities will not be significant. Many of the changes being implemented in the rule are in response to efforts to make the program more accessible to applicants in general and to smaller applicants in particular, as well as to clarify and simplify program requirements. In addition, a number of changes are in response to comments and concerns voiced by applicants and other stakeholders during listening sessions and public comment periods for the proposed and interim rules. The most significant changes in the rule that affects small producers are the addition of Veteran Farmer or Rancher applicants as a priority category and the additional priority points available for Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects meet the ''best contribute'' provision from the 2014 Farm Bill. These changes do not have a significant economic impact on small entities because the cost to applicants as estimated by the Agency in the Paperwork Reduction Act (PRA) burden package is approximately $70 per applicant impacted by the changes. Of these applicants, those addressing the ''best contributes'' priority are expected to be comprised of larger entities. This is based on determining which of the estimated costs in the PRA burden package would be incurred by the applicants impacted by the incorporation of the 2014 Farm Bill provisions and the percentage of those considered ''small entities.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The regulatory impact analysis conducted for this final rule meets the requirements for EO 13211, which states that an agency undertaking regulatory actions related to energy supply, distribution, or use is to prepare a Statement of Energy Effects. This analysis finds that this rule will not have any adverse impacts on energy supply, distribution, or use.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*.

Executive Order 13175, Consultation and Coordination With Indian Tribes

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Rural Development to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

In response to the 2008 Farm Bill USDA participated in a series of formal Tribal consultation sessions to gain input by elected Tribal officials, or their designees, concerning the impact of the Interim rule on Tribal governments, Tribal producers and Tribal members. These sessions were intended to establish a baseline of consultation for future actions and informed USDA's policy development within the VAPG program.

As a result of these consultations, USDA developed and issued guidance on the eligibility of Tribes and Tribal entities, incorporated this guidance into application materials, and provided updated guidance to USDA field staff, Tribes and the general public on required documentation.

As the 2014 Farm Bill contained no additional requirements that had Tribal implications or substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes, USDA has determined that no further Tribal consultation is necessary. However, USDA will continue to work directly with Tribes and Tribal applicants to improve access to this program. The policies contained in this rule do not have Tribal implications that preempt Tribal law. For further information on USDA Rural Development's Tribal consultation efforts, please contact the Agency's Native American Coordinator at *aian@wdc.usda.gov* or 720–544–2911.

Programs Affected

VAPG is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under the currently approved OMB Control Number 0570–0039. The Agency has determined that changes contained in this regulatory action do not substantially change current data collection.

E-Government Act Compliance

The Agency 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.

I. Background

On February 23, 2011 (76 FR 10090–10122), the Agency published an interim rule for the VAPG program. The interim rule addressed comments that the Agency received on the VAPG proposed rule, which was published in the **Federal Register** on May 28, 2010 (75 FR 29920), and clarified proposed provisions. Changes were made throughout the rule, with many of the changes addressing definitions and how awards are made, including assigning priority. The interim rule became effective on March 25, 2011, and the Agency provided a 60-day comment period for the public to submit comments on the interim rule.

On February 7, 2014, the Agricultural Act of 2014 (referred to herein as the 2014 Farm Bill) was signed into law. Among its many provisions were two that affected the VAPG program. Section 6203 of the 2014 Farm Bill authorized the Secretary of Agriculture to give priority to:

- Veteran Farmers and Ranchers and
- Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers.

The Agency held a listening session on April 25, 2014, to receive input from interested stakeholders on how to best implement these two provisions. There were a total of two participants who provided comments and suggestions.

All of the comments received on the interim rule and during the listening session are summarized in Section III of this final rule. Most of the interim rule's provisions have been carried forward into the final rule, although there have been some additional changes. A summary of major changes to the interim rule are summarized below in Section II.

II. Summary of Changes to the Final Rule

This section presents the major changes to the VAPG final rule. Most of the changes were the result of the Agency's consideration of public comments on the interim rule, during the listening session (see Section III below for specifics on comments received), and on its own experience with the program in order to improve the implementation and administration. The Agency is also making changes to the rule due to statutory changes resulting from the enactment of the 2014 Farm Bill (see Section IV below).

A. Definitions (§ 4284.902)

1. The following definitions have been added:

- ''Harvester'' is defined to clarify that Harvesters must be able to document their legal right to access and harvest the Agricultural Commodity that is the subject of the value-added project. It further conveys that individuals or entities that merely glean, gather, or

collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters. This clarification is necessary because the definition in Interim Rule did not contain sufficient information to guide potential applicants in this category.

• ''Steering committee''—as a subset of the Independent Producer definition—is defined to clarify that Steering Committees must be comprised wholly of Independent Producers. This clarification is necessary because there was confusion among potential applicants about the required structure for this applicant type.

• ''Veteran farmer or rancher'' was added to conform to the 2014 Farm Bill definition that refers to 7 U.S.C. 2279(e).

2. The definitions of ''financial feasibility'' and ''branding'' have been removed because the terms are no longer included in the regulation.

3. The following definitions have been revised:

• ''Agricultural food product'' was revised to include seafood products customarily sold or consumed live, to remedy the inadvertent exclusion of producers of these products from applying under the Locally-Produced Value-Added Agricultural Product methodology.

• ''Agricultural producer'' was revised in response to public comments, to clarify that individuals and entities that may have ownership and/or financial control without being engaged in the day-to-day labor and management will not be eligible for a value-added producer grant. Agricultural Producer was also revised to clarify that the eligibility of Tribes and Tribal entities, due to their unique structures, will be determined by the Agency without regard to day-to-day labor, management, and field operation and right to harvest status.

• ''Agricultural producer group'' was revised to clarify that this type of applicant must be a non-profit, to alleviate on-going confusion about the structure of this applicant type and to conform to long-used examples.

• ''Beginning farmer or rancher'' was revised to clarify the required composition for reserved fund applicants (100 percent of owner members must be beginning farmers or ranchers) and priority point applicants (more than 50 percent must be beginning farmers or ranchers).

• ''Family farm'' was revised to remove the reference to the FSA definition of family farm.

• ''Farm- or Ranch-based renewable energy'' was revised to clarify how generated energy must be utilized to meet the requirement to demonstrate expanded customer base and increased revenue returned to producers.

• ''Feasibility study'' was revised to limit the definition to a description of the document, rather than the means by which the document is developed by eliminating reference to qualified consultant.

• ''Independent producer'' was revised to clarify that a ''majority'' of raw commodity owned by the applicant is defined as more than 50 percent. The definition was also revised to clarify that Steering Committees must apply as an Independent Producer and that a program-eligible legal entity must be established by the Steering Committee prior to Agency approval of the grant agreement. Further, it clarifies that Harvesters must apply as an Independent Producer and the eligibility requirements for Harvesters with regards to priority points and reserved funding. Independent Producer was also revised to clarify the eligibility of Tribes and Tribal entities, with regard to raw commodity ownership.

• ''Marketing plan'' was revised to eliminate an unnecessary reference to Qualified Consultant.

• ''Medium-sized farm or ranch'' was revised to conform to the Economic Research Service's more commonly used gross sales threshold of $1,000,000 for operators of medium-sized farms or ranches.

• ''Mid-tier value chain'' was revised in response to public comments to include consumers as participants of an eligible project.

• ''Planning grant'' was revised to limit the definition to a description of this type of grant, rather than the means by which it is developed, by eliminating reference to qualified consultant.

• ''Product segregation'' was revised to ''physical segregation'' to be consistent with the statutory language within the value-added agricultural product. In addition, an example of a physical segregated product was provided.

• ''Small-sized farm or ranch'' was revised to conform to the Economic Research Service's more commonly used gross sales threshold of $500,000 for operators of small-sized farms or ranches.

• ''Socially-disadvantaged farmer or rancher'' was revised to clarify eligibility requirements for individuals and entities in regards to priority points and reserved funding as per the statute.

• ''Value-added agricultural product'' was revised to clarify that the agricultural commodity (raw commodity) must be produced in the United States (including the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa).

B. Environmental Review (§ 4284.907)

The language of this section was modified to indicate that working capital awards are generally excluded from the documentation requirements in 7 CFR part 1940, subpart G.

C. Applicant Eligibility (§ 4284.920)

1. Type of applicant. Since information regarding the eligibility of Tribes and Tribal entities had previously been provided only in Agency guidance through an Administrative Notice, the Agency added language indicating that Tribes and Tribal entities may be eligible for the program if they meet all requirements. In addition, the availability of additional guidance from the Agency is noted.

2. Citizenship. Language providing an exemption to the requirement that applicants be comprised of at least 50 percent U.S. citizens or legally-admitted permanent residents was deleted to ensure that awards are not made to non-U.S. citizens or entities.

3. Multiple applications. Since information regarding the limitation on application submissions by affiliated entities was previously included only in the annual solicitation, the Agency added language more specifically defining ''affiliated'' entities and the limitations on submission of multiple applications.

D. Project Eligibility (§ 4284.922)

1. Purpose eligibility. While the Interim Rule indicates that applications containing ineligible costs totaling more than 10 percent of Total Project Costs will be deemed ineligible, it does not discuss the status of applications containing less than 10 percent ineligible costs. Therefore, the Agency is clarifying that applications containing ineligible expenses totaling less than 10 percent of Total Project Costs must have those expenses removed from the project budget or replaced with eligible expenses if selected for an award.

2. Working Capital. While the Interim Rule provides requirements for working capital grants, it does not include the requirement of specific quantification of the amount of commodity necessary for the project. This information instead was included in an Agency-developed application template. The Agency, therefore, is adding in this final rule the requirement that applicants quantify and document within their applications, the amount of commodity required for the project, as well as the amount they

will produce, and the amount to be procured from third-parties. This change will assist the Agency in determining whether applicants meet the eligibility requirement to supply a majority of the raw commodity needed for the project.

E. Reserved Fund Eligibility (§ 4284.923)

1. A separate section was created for Reserved fund eligibility to delineate between it and Priority point eligibility, and for ease in navigating the requirements.

2. Clarification regarding the eligibility of Independent Producer Harvesters was included.

F. Priority Point Scoring Eligibility (§ 4284.924)

1. A separate section was created for Priority point eligibility to delineate between it and Reserved fund eligibility, and for ease in navigating the requirements.

2. Priority point eligibility status of Harvesters was included.

3. Documentation requirements for Veteran Farmers and Ranchers was included.

4. The gross sales dollar threshold was changed to conform to the Economic Research Service's more commonly used definition.

5. Priority point eligibility was changed to include a new Farm Bill requirement providing points to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-sized Farms and Ranches that are structure as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers.

6. Administrator Priority Categories was amended to give State Director discretion to award priority points in the event that the VAPG program is State-allocated in accordance with 7 CFR 1940.593.

G. Ineligible Uses of Grant and Matching Funds (§ 4284.926)

1. Use of funds for agricultural production expenses. Based on applications received and inquiries from applicants, current language on the prohibition of use of grant or matching funds for expenses related to the production of the raw commodity does not include enough specific information to fully inform prospective applicants. Therefore, the Agency is adding language to clarify that production planning, purchase of production inputs, and delivery of raw commodity is explicitly prohibited.

2. Use of funds to pay for applicant-supplied raw commodity. While the Interim Rule is clear that applicants may use grant funds to purchase raw commodity (49 percent or less of the total necessary) from third-parties, it does not contain specific language prohibiting the use of grant funds to purchase commodity from the applicant itself. It is the long-held position of the Agency that applicants cannot use grant funds to purchase raw commodities from themselves. Thus, the Agency is adding language to indicate that applicants or applicant entities cannot use grant funds to purchase raw commodity from themselves, from applicant-owned or affiliated entities, or from member producers.

3. Use of funds to pay salaries for applicant or applicant family member was deleted from this section as it only applied to use of grant funds. This section refers to ineligible uses of both grant AND matching funds. The prohibition on use of grant funds for this purpose and an explanation of the allowability of use of applicant or family member time as an in-kind matching contribution is detailed in § 4284.925 and in § 4284.931.

H. Application Package (§ 4284.931)

1. System for Awards Management (SAM) Registration. This registration requirement became mandatory after publication of the Interim Rule and the Agency has only included it in the annual solicitation. Therefore, language is being added to clarify that all applicants must be registered in SAM.

2. Use of Grant and Matching Funds. The Interim Rule indicates that grant funds and matching funds are subject to the same use restrictions. However, there are two exceptions in § 4284.925(a) and (b). For both planning and working capital grants, grant funds cannot be used to pay applicants or family members for their time spent on the project. But, appropriately-valued applicant or family member time up to a maximum of 25 percent of Total Project Costs can be used as an in-kind matching contribution. Similarly, for working capital grants, grant funds cannot be used to pay the applicant or affiliated parties for raw commodity to be used in project. However, the raw commodity can be used as in-kind match. Therefore the Agency has revised this section to reflect this change.

3. Performance Evaluation Criteria. Required Performance evaluation criteria were modified to respond to program metrics requirements in Section 6209 of the 2014 Farm Bill and also to ensure that data collected for program outcome and evaluation purposes is consistent, robust, and relevant to both the stated program purposes and ongoing evaluation efforts. Corresponding changes were made to § 4284.960 (Monitoring and reporting program performance) to specify that performance reports would include required data related to achieving programmatic objectives and a comparison of accomplishments with the objectives stated in the application. At a minimum, this would include information on: (i) Expansion of customer base as a result of the project; (ii) Increased revenue returned to the producer as a result of the project; (iii) Jobs created or saved as a result of the project; and (iv) Evidence of receipt of matching funds, if included or provided for in the project. The Agency also may request any additional project and/or performance data for the project for which grant funds have been received, for example, information that would promote greater understanding of the determinants of success of individual projects, inform program administration and evaluation, or that would enable the use of data for program administration or evaluation purposes.

Until such time as the Agency determines that additional data may be necessary to further inform program performance, the Agency will continue to utilize the data associated with the current Office of Management and Budget approved information collection requirements for the program. If and when the Agency determines that additional data is necessary, it will submit a new information collection package to OMB for review and approval prior to publication in the **Federal Register** for public review and input.

I. Filing Instructions (§ 4284.933)

Submission requirements provide information on completeness of applications, but do not explicitly state that because the program is a nationally-competitive program, no revisions or additional information will be accepted after the application deadline. Therefore, the Agency is clarifying that no revisions or additional information will be accepted after the application deadline.

J. Proposal Evaluation Criteria and Scoring Applications (§ 4284.942)

The priority point criterion (Criterion 5) was reconfigured to accommodate awarding of points to projects that ''best contribute'' to the creation of or increase

in marketing opportunities for members of specified priority groups, per the 2014 Farm Bill language.

III. Summary of Comments and Responses

The Interim Rule was published in the **Federal Register** on February 23, 2011 (76 FR 10090), with a 60-day comment period that ended April 25, 2011. The Agency also conducted a listening session on April 25, 2014, to receive comments on the VAPG provisions in the 2014 Farm Bill.

Comments on the Interim Rule were received from 11 commenters, and comments on the VAPG provisions in the 2014 Farm Bill were received from 2 commenters. Combined, these commenters provided approximately 14 similar comments. Commenters included industry and trade associations and individuals. As a result of some of the comments, the Agency made changes in the rule. The Agency sincerely appreciates the time and effort of all commenters.

Responses to the comments on the interim rule and those received during the listening session are discussed below. Comments are grouped by category and rule section.

A. General

Timing of Final Rule

Comment: Two commenters stated that some of the shortfalls in the Interim Rule are quite serious and deserve to be addressed shortly after conclusion of the 2010/11 grant round. The commenters urged the Agency not to leave this Interim Rule in place for more than this upcoming grant cycle and recommended that the Agency issue a second Interim Rule or a Final Rule by the time the 2012 NOSA is issued.

Response: While the Agency appreciates the fact that the commenters are concerned about certain provisions in the Interim Rule published in 2011, the Agency has had to continue implementing the VAPG program under the Interim Rule until it had the opportunity to consider fully all of the comments received on the Interim Rule and now to also be able to incorporate new provisions associated with the 2014 Farm Bill. Hence, the Agency is publishing this Final Rule to address all of the comments received on the Interim Rule.

Review Panels

Comment: One commenter stated that they understand the Agency chose not to put information in the Interim Rule about who will do the review and evaluation of project proposals. This information has instead appeared in the annual NOSA. The commenter stated that they can appreciate the Agency's hesitancy in placing this type of information in the rule. The iterative NOSA process allows for the evolution of the program in a more flexible manner. The commenter stated that they believe the Agency should reflect on the experience of the program over time, especially with respect to the 2009 and 2010/11 process, and should include in either a second Interim Rule or in the Final Rule the broad outlines of the review process which could then still be adjusted within those broad parameters on a year-by-year basis.

As part of the review, the commenter strongly encourages the Agency to explore the experiences of sister agencies at USDA that also operate review panels. The program would be improved by insertion of a section in the rule on review panels, provided that it is not as specific and rigid as to not allow positive program evolution over time.

Response: The Agency disagrees with the recommendation to incorporate into the rule even a broad outline of the review process because of the ensuing loss of flexibility. The Agency also disagrees with the suggestion to include a section in the rule concerning review panels. Compared to some programs that use a review panel process, the VAPG program has a much higher volume of applications and applications that are more diverse in nature. Because of these two characteristics, a set review panel process, in the Agency's estimation, does not offer any benefits compared to the current process in which applications are scored by both Rural Development state office personnel and assigned, qualified, non-federal independent reviewers. Therefore, the Agency has not incorporated either of the commenter's suggestions in the Final Rule.

B. Purpose (§ 4284.901)

Comment: One commenter stated that the ''Purpose'' section of the rule speaks to the major activities of the program—''to develop businesses that produce and market value-added agricultural products''—but does not actually address the underlying purpose of the program. The commenter recommended the addition of language that speaks to the purpose of the program, namely to ''create expanded marketing opportunities, increase producer income, and enhance community economic development.''

Response: In consideration of this comment, the Agency has included reference to creating marketing opportunities for businesses in the Purpose section.

C. Definitions (§ 4284.902)

Agricultural Producer

Comment: Two commenters noted that the definition of ''agricultural producer'' has been expanded from individuals and entities actively engaged in production to also include those who maintain ownership and financial control of an operation without being actively engaged in labor and management.

The commenters claimed that this change could ''open the floodgates'' to non-farm passive investors and landlords to reap the benefits of a program clearly intended to raise incomes for producers. The commenters urge USDA to amend the definition of ''agricultural producer'' to read as follows:

''Agricultural producer''. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may ''directly engage'' through substantially participating in the labor, management, and field operations.''

Response: The Agency agrees with the basic concerns expressed by the commenters and has revised the definition by removing reference to agricultural producers who only maintain ownership and financial control of the agricultural operation.

Beginning Farmer or Rancher

Comment: Two commenters expressed concern over the definition of beginning farmer or rancher.

One of the commenters stated that a citation for a very lengthy statutory definition (4 pages) is provided in the Interim Rule as part of this VAPG program definition for ''beginning farmer or rancher,'' even though the majority of the requirements in the statutory definition apply only to FSA loan programs and do not appear applicable to RD grant programs.

The commenter recommended that the Agency drop the statutory citation in the Interim Rule and simply specify the eligibility requirements that are applicable to beginning farmers and ranchers. The other commenter stated that the ''beginning farmer or rancher'' definition, as well as the related language in § 4284.922(c)(1)(i), must be fixed to make its meaning clear and precise. According to the commenter, the definition in the Interim Rule is extremely convoluted, could be difficult

for users, administrators, and review panels to interpret in its current form, and thus needs to be clearer and cleaner.

Response: The Agency agrees with both commenters that the definition needs to be both simpler and clearer. The Agency has removed the statutory citation and added reference to Independent Producer to address the ''substantial participation'' concern. In addition, we have reformatted the definition to make clearer the definitional requirement to be eligible for priority points and for the reserved funding pool that includes beginning farmers and ranchers. The following table illustrates the application of the definition for determining whether the applicant qualifies as a beginning farmer or rancher for priority points or the above mentioned reserved funding pool.

If the applicant is . . .	and has the following characteristics	Is the applicant a beginning farmer or rancher eligible for . . .	
		Priority points?	Reserved funding?
An Independent Producer Individual	• More than 10 years of experience	No	No
	• 10 years or less of experience	Yes	Yes
An eligible entity (agricultural producer, a farmer/rancher cooperative, or an independent producer other than a harvester).	• 50 percent or less of the members have 10 years or less of experience.	No	No
	• More than 50 percent of the members have 10 years or less of experience.	Yes	No
	• 100 percent of the members have 10 years or less of experience.	Yes	Yes

Farm- or Ranch-Based Renewable Energy

Comment: Two commenters stated that USDA should clarify that an accepted new added value of an agricultural commodity is its use in qualifying for a tradable carbon credit if the production of renewable energy destroys, reduces or mitigates the production of green-house gases (GHG), or possibly for a renewable energy credit. If this new added value of an agricultural commodity is accepted, then the Agency needs to clarify in the rule, where appropriate, that equipment used to measure and monitor greenhouse gases for trading purposes is a legitimate expense covered by the program.

Response: The Agency is not revising the rule as suggested by the commenter because the Agency is bound by the authorizing statute to consider only the following, whether the agricultural product: (1) Has undergone a change in physical state, (2) was produced in a manner that enhances the value of the agricultural commodity, (3) is physically segregated in a manner that results in the enhancement of the value-added agricultural commodity, (4) is a source of farm- or ranch-based renewable energy, including E–85 fuel, and (5) is aggregated and marketed as a locally produced agricultural food product.

Comment: One commenter stated that this definition requires on-farm generation of renewable energy by an Independent Producer that produces the agricultural commodity used to generate the renewable energy on-farm as a value-added product. The commenter then stated that the Agency needs to clarify its policy regarding whether these projects fulfill the statutory eligibility requirement that all VAPG projects demonstrate an increase in customer base and an increase in revenues returning to the producers as a result of the VA project. Specifically, the Agency needs to clarify whether on-farm energy savings that result from bio-based net metering of electricity, or utilizing methane for thermal energy, or utilizing liquid fuels for farm machinery operations will qualify (in other words, whether a farmer can use his own value-added products to reduce his own operating costs to demonstrate increased customer base and revenues).

Response: The Agency agrees with the commenter that all VAPG projects must demonstrate an increase in customer base and an increase in revenues returning to the producers as a result of the value-added project. A farmer that uses a value-added product to simply reduce the farm's operating costs does not meet the intent of these two conditions and would not qualify (see Scenario 3 below). Thus, there is no ''perk'' as characterized by the commenter and as such there is no effect on the other product eligibility categories to put them at a disadvantage.

The Agency acknowledges, however, that there are situations where making such determinations with regards to renewable energy are not necessarily clear. To help understand the application of this definition with regard to determining project eligibility, consider the following scenarios.

Scenario 1. A farmer installs an anaerobic digester to use cow manure to produce electricity and sells that electricity to the local utility. The electricity generated by the digester qualifies as renewable energy. The local utility represents an increase in the customer base and the farmer sees a direct increase in revenues from the sale of the electricity to the utility. Thus, this project qualifies as a value-added project eligible for consideration for a grant.

Scenario 2. Same scenario as Scenario 1, except that, instead of selling the electricity to the local utility, the farmer uses it to generate heat and power for a hydroponics facility on the farm from which a value-added product is produced. In this second example, the renewable energy project also qualifies. By producing the value-added product, the farmer is expanding his customers to those customers buying the value-added product. The farmer is seeing an increase in his revenue either directly as the result of sales of the new value-added product or indirectly as a reduction in operating costs of the farm. Thus, this project also qualifies as a value-added project eligible for consideration for a grant.

Scenario 3. Same scenario as Scenario 1, except under Scenario 3 the farmer uses all of the electricity generated by the anaerobic digester to replace electricity purchased from the local utility to help power current farm operations. While the farmer sees an indirect increase in revenues through a reduction in operating costs (as in Scenario 2), there is no increase in the customer base for the farmer. Therefore, both conditions are not met and the project would not be eligible for a VAPG grant.

The Agency revised the subject definition in order to clarify how the definition is to be applied.

Comment: One commenter, as a marketer of photovoltaic solar systems, believes that the elimination of grants for renewable energy systems is not a step we can take if we want to move forward as a nation.

Response: The definition for ''Farm- or Ranch-based renewable energy'' states, in part, that on-farm generation of energy from wind, solar, geothermal, or hydro sources are not eligible. The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is ''a source of farm- or ranch-based renewable energy, including E–85 fuel.'' Notwithstanding the virtues of solar systems as described by the commenter, it is the Agency's position that solar is not an agricultural commodity or a Value-Added agricultural product. The Agency notes that agricultural producers and rural small businesses may apply for grants under the Rural Energy for America Program for solar projects as described by the applicant.

Feasibility Study, Marketing Plan, and Planning Grant

Comment: Two commenters recommended adding a sentence cross-referencing the up to 25 percent in-kind match option in § 4284.923(a) and (b), as is already done for the ''conflict of interest'' definition and the ''matching grant'' definition. According to the commenters, the addition of the cross reference will remove confusion that is otherwise created as to whether the definitions override the exception.

One of the commenters stated that another viable option with respect to the feasibility study, marketing plan, and planning grant definitions is to simply describe the study, plan or grant, without reference to the qualified consultant as has been done in the case of ''business plan.'' The commenter further stated that they would support either option.

Response: The Agency has decided to adopt the second suggestion in order to minimize the confusion identified by the commenters and thus has revised the three definitions by removing reference to ''qualified consultant.''

Independent Producers

Comment: Three commenters were concerned that the definition of ''harvester'' within the Independent Producer definition needed clarification.

Two of the commenters stated that clarifications may be in order to ensure that third-party entities used to build, manage and operate anaerobic digesters are considered to be ''harvesters of an agricultural commodity'' (*e.g.,* animal manure) and eligible for participation in the VAPG Program as an ''Independent Producer.''

The third commenter stated that the Interim Rule lacks sufficient detail to demonstrate ''what and who'' qualifies as a ''harvester.'' Because the definition is limited to an Independent Producer Agricultural Producer who has the ''legal right to harvest an agricultural commodity,'' it raises a potential, yet unintended, conflict with the primary program purpose that all Independent Producers ''currently own and produce the agricultural commodity to which value will be added.''

This commenter recommended that the Agency clarify ''what and who'' qualifies in the ''harvester'' category, and specifically state whether or not a simple collection or gathering of any agricultural commodity suffices. According to the commenter, simple collection of an agricultural commodity by a non-agricultural producer would not meet the stated intention of the program. The commenter provided the following examples: (1) A logger who has the legal right to harvest logs from a land owner would be eligible, but a non-logger wanting to simply collect unwanted slash from the landing of a land-owner or logger would not be eligible, and (2) a non-agricultural producer business simply wanting to collect dairy manure from various farming operations to convert it to renewable energy would not be eligible. The commenter stated that, for these reasons, the Interim Rule needs to clarify these eligibility distinctions.

Response: The Agency agrees with the commenters that the meaning of ''Harvester'' needs to be clarified and strengthened and has done so (including adding a definition for Harvester).

The Agency disagrees, however, with the two commenters that the third-party entities collecting animal manure for use in anaerobic digesters, as described by the two commenters, are eligible for the program. The Agency agrees with the examples provided by the third commenter as to which ''Harvesters'' would or would not be eligible to participate in the VAPG program.

For the purposes of the VAPG program, the Agency has determined that entities and individuals, such as those described by the commenter, that merely glean, gather or collect residual commodities that result from an initial harvesting or production of a primary agricultural commodity are not considered ''Harvesters'' and are not eligible for this program. For example, see the 2014 NOFA for the program (78 FR 70261, November 25, 2013). In the added definition, the Agency has clarified that the entity's (or individual's) harvest must be a ''primary'' agricultural commodity in order to be eligible; a harvester cannot merely glean, gather, or collect residual commodities. So for example, a logger who has a legal right to access and harvest logs from the forest that are then converted into boards would be an eligible applicant, as would a fisherman that has the legal right to access and harvest fish from the ocean or river that are then processed.

Comment: One commenter recommended revising the definition of ''Independent Producers'' and elsewhere as appropriate to clarify whether ''harvesters'' are eligible for priority points and reserved funds for certain applicant types. Specifically, one or more definitions need to clarify whether ''harvesters'' are the equivalent of ''farmers'' and, if so, the Interim Rule needs to specify their eligibility for both priority points and reserved funds in applicable categories.

Response: As indicated by the commenter, harvesters may only apply as an Independent Producer applicant type in order to be eligible for the VAPG program. However, harvester operations do not meet the definition requirements for a Farm or Ranch and, as such, harvesters are not equivalent to farmers or ranchers. Harvester applicants, therefore, are not eligible to receive reserve funds for a Beginning Farmer or Rancher or a Socially-Disadvantaged Farmer or Rancher; and are not eligible to receive Priority Points for a Beginning Farmer or Rancher, a Socially-Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized Farm or Ranch structured as a Family Farm, or a Farmer or Rancher Cooperative.

However, if the harvester is proposing a mid-tier value chain project, then the harvester would be eligible for priority points and for competing for mid-tier value chain reserve funding. The Agency has revised the rule to clarify who is eligible for priority points (see § 4284.924) and who is eligible for reserved funding (see § 4284.923).

Medium-Sized Farm

Comment: One commenter supported the increase from $700,000 to $1 million in the annual gross sales-based definition of medium-sized farm or ranch. The commenter believes this will more adequately reflect commodity, enterprise, and regional differences, while ensuring program funds are

targeted to the ''disappearing middle'' of agriculture.

Response: The Agency thanks the commenter for supporting the change made to this definition in the Interim Rule and has retained the $1 million ceiling in the Final Rule.

Mid-Tier Value Chain

Comment: Four commenters recommended expanding the definition of a Mid-Tier to include direct sales to consumers as well as to businesses and cooperatives.

Response: The Agency agrees with the recommendation and has added reference to ''consumers'' to the definition in the rule.

D. Applicant Eligibility (7 CFR 4284.920)

Comment: One commenter recommended that, because many local food initiatives have been created as community based non-profits, non-profit entities that are benefitting small and medium producer or ranchers be included as a fifth type of eligible applicant type for the reserve funds for the Mid-Tier Value Chain.

Response: The Agency has not revised the rule as requested by the commenter because the authorizing statute identifies the applicant types that are eligible for the VAPG program and the Agency cannot add another applicant type without statutory authority.

E. Project Eligibility (§ 4284.922)

Branding

Comment: Three commenters oppose the removal of limitations on branding activity costs. One of the commenters stated that the VAPG program should not promote advertising as a primary project function.

One of the commenters agreed that, though branding is an essential part of developing a new product, it should not be the sole focus of a VAPG project. Even a complete marketing plan (of which branding is just one part) is only a fraction of what's needed for any good VAPG project—one which helps farmers develop new value-added products.

The commenter recommended that the Final Rule stress § 4284.922(a)(1) in stating that projects that are primarily branding projects do not meet the criteria of VAPG. The commenter suggested that one way this could be done is to include relevant language from the past NOSAs. The 2009 NOFA under the section titled ''Other Eligibility Requirements'' and from the Proposed Rule, under § 4284.922(c): ''Applications that propose only branding, packaging, or other similar means of product differentiation are not eligible in any category. However, applications may propose branding, packaging, or other product differentiation activities as a component of a value-added strategy for products otherwise eligible in one of the above categories.''

One of the commenters stated that, by eliminating this section, the Agency gives the impression that it is endorsing projects that are 100 percent for branding. This is in direct contradiction to the requirement under § 4284.222(a)(1) that the project must focus on adding value to a product in one of five defined ways. The commenter stated that, by permitting all grant funds to be used for branding, the Agency would be opening the floodgates to becoming a program to support the advertising and branding budgets as if it were a domestic equivalent of the Market Access Program.

Response: As stated in the response to comments on branding in the Interim Rule, the Agency recognizes that branding and packaging are important components of value-added marketing strategies. The program's authorizing statute is clear that creation of marketing opportunities is an important component of the program. The use of funds to develop plans and strategies to create marketing opportunities necessarily includes product differentiation and promotional activities, without which, there would be no ability to accomplish two key program requirements: Expansion of customer base and increased revenue returned to the producers of the value-added product. All applicants, including those with significant branding or advertising components must still meet all other program eligibility requirements, including meeting one of the five value-added project methodology categories. Therefore, no changes related to branding have been made.

Purpose Eligibility

Comment: Two commenters noted that, in § 4284.922(b)(6)(i) of the Interim Rule, a new provision exempts Independent Producers with existing products from applying for working capital grants of $50,000 or more from providing feasibility studies. The commenters stated that they recognize that in theory this modification to the rule could serve individual farmers in need of marketing assistance for their value-added products. However, the commenters worry that, without limitations, VAPG could easily become a program for marketing rather than predominantly for developing value-added products. One of the commenters encouraged the Agency to comprehensively track applications and awards for this subset of the program and to monitor the extent to which it modifies the current success of VAPG.

The other commenter stated that this new provision seems to open a loophole for any old products that need a new advertising campaign.

Response: The program's authorizing statute provides that only Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority Controlled Producer-Based Business Ventures are subject to the 'emerging market' requirement. That leaves otherwise qualified Independent Producer applicants free to propose projects that expand markets for existing value-added products. As such, the Agency deems the long-standing requirement of a business or marketing plan in lieu of a feasibility study as sufficient and plans no changes in rule. In addition, as stated in response to the comments above regarding branding and advertising, it is the Agencies position that the use of grant funds to create marketing opportunities through product differentiation and promotional campaigns are important components in accomplishing program objectives.

Reserved Funds Eligibility

Comment: One commenter stated that a problem occurs in § 4284.922(c)(1)(i) (as found in the Interim Rule) in the last sentence of that paragraph. According to the commenter, the sentence appears to mean that any independent farm, in order to qualify for the beginning farmer set-aside or priority, must be a farm in which all owners are beginning farmers. The way the sentence is stated, however, it could also mean that any applicant entity, made up of multiple farms, must be entirely made up of beginning farmers.

In support, the commenter pointed out that § 4284.922(c)(1)(i) says ''For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers'' while (d)(1) says ''For entities with multiple owners or members, 51 percent of owners or members must be eligible beginning farmers or ranchers.'' This is contradictory and requires a simple clarification of terms to distinguish between eligible farms and eligible entities under the beginning farmer priority and set-aside.

Response: While the commenter is correct in identifying the differences between the paragraphs, the differences are not in error. As stated earlier in response to a comment on the definition of ''Beginning Farmer or Rancher,'' there

is an eligibility distinction with regard to priority points versus reserved funding. Specifically, to be eligible for priority points, at least 51 percent of the farmers in an entity composed of multiple farmers must each have no more than 10 years of experience. (**Note:** In the Final Rule, ''at least 51 percent'' has been changed to ''more than 50 percent''.) However, to be eligible for the reserved funding that includes beginning farmers and ranchers, all of the farmers (100 percent) in an entity composed of multiple farmers must have no more than 10 years of experience. This is based on the differences contained in the authorizing language in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), resulting in two separate priority categories. The Food, Conservation, and Energy Act of 2008 in section 6002(6) stated that the Secretary shall give priority to projects that ''contribute to opportunities'' for beginning and socially disadvantaged farmers and ranchers, while subparagraph (7)(C) stated that the Secretary shall reserve 10 percent of the amounts made available for each fiscal year under this paragraph to fund projects ''that benefit: beginning farmers or ranchers or socially-disadvantaged farmers or ranchers.'' While the Agricultural Act of 2014 does not contain the ''contribute to opportunities'' language, it still contains separate language in paragraph (6) that gives ''priority'' to beginning farmers or ranchers and socially-disadvantaged farmers or ranchers. The Agency has revised the rule to clarify this.

Comment: Four commenters who recommended that the definition of a Mid-Tier be expanded to include direct sales to consumers, recommended the following change to § 4284.922(c)(2)(ii) (as found in the Interim Rule): Describe at least two alliances, linkages, or partnerships within the value chain that link independent producers with businesses, cooperatives or consumers directly that market value-added agricultural commodities or value added products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration.

Response: The Agency agrees with the commenters and has revised the rule accordingly.

Comment: Four commenters stated that they recognize the requirements in § 4284.922(c)(2)(v) (as found in the Interim Rule) and the critical importance of the raw agricultural product being utilized for the value-added product comes from the project participants. However, in the case of the Mid-Tier Value Chain, the commenters feel that 50 percent ownership of the product should not be required of the applicant organization because this organization is not an agricultural producer. Rather, the benefiting agricultural farmers and ranchers of the applicant organization should be required to adhere to this rule. The commenters proposed the following change to the Interim Rule for this section: Demonstrate that the benefiting small or medium sized farms or ranches that are structured as a family farm of the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value added product that is the subject of the proposal.

Response: The Agency agrees with the commenter and applies this provision in the Final Rule as described by the commenter. As a reminder, however, the applicant organization must be a producer-based organization. So for example, if an applicant organization is composed of wheat growers and rice growers and that organization is proposing a VAPG project that benefits only the wheat growers, the Agency applies this provision by looking at whether the wheat growers own and produce more than 50 percent of the raw agricultural commodity that will be used for the VAPG project. To clarify this, the Agency has revised this paragraph to indicate that the members of the applicant organization that are benefiting from the proposed project must currently own and produce more than 50 percent of the raw agricultural commodity that will be used for the value added product that is the subject of the proposal.

F. Eligible Uses of Grant and Matching Funds (§ 4284.923)

Comment: One commenter suggested that, in order to keep business and enterprise planning of VAPG projects farmer-centered, farmers and ranchers directly participate in the development of VAPG projects and be allowed to count their time as an in-kind contribution toward the program's matching requirements. The Interim Rule responded to this suggestion by allowing time to count as an in-kind contribution up to 25 percent of the total project costs.

The commenter applauded the Agency for this decision and believes it is a step in the right direction. The commenter urged the Agency to do a detailed assessment of the 25 percent cap, including a survey of applicants after the next grant round to get detailed reactions to the 25 percent cap. If the assessment, including the survey, reveals the 25 percent cap is a barrier to the program meeting its objectives, including participation by the statutory priority groups, they would then urge the Agency to raise the cap.

Response: The Agency appreciates the commenter's support of the change, which is retained in the Final Rule. The Agency will take under advisement the commenter's suggestion for an assessment of the 25 percent cap.

G. Simplified Application (§ 4284.932)

Comment: One commenter commended the Agency's commitment to developing a simplified application form, as required by statute, in the annual Notice of Solicitation of Applications (NOSA) for the program. The commenter stated that they trust it will appear in the NOSA for FY 2010/11 funding and thereafter and further stated that they will comment on the simplified application when it appears in the NOSA.

Response: The Agency acknowledges the comment and looks forward to continuing to help improve the simplified application for the program.

H. Priority Points (§ 4284.942)

The 2014 Farm Bill added Veteran Farmers and Ranchers as an additional priority group. The Agency is including this group in the Final Rule as a priority group and is implementing provisions consistent with the provisions identified in the March 24, 2014 notice published in the **Federal Register** (79 FR 16277) that extended the application deadline and added priority for Veteran Farmers and Ranchers.

The Agency also received the comments concerning scoring associated with priority groups as presented below.

Priority Groups

Comment: One commenter opposed the changes in point scoring that appear to reduce the priority awarded to statutory priority groups, which is important to meeting the goals of the VAPG program.

A second commenter stated that they had recommended that the Agency increase the percentage of total proposal evaluation ranking points for projects that foster the program's statutory priority for small and medium-sized family farms and beginning and Socially-Disadvantaged farmers, from 15 to 25 out of a total of 100 points. They further stated that the Interim Rule, however, moves in the exactly the opposite direction, decreasing those ranking points from 15 to 10 points.

The commenter stated that it strains the meaning of the word ''priority'' to assign it a ten percent factor. Ten percent might be appropriate in a ''bonus'' situation in which the factor might be considered a minor distinguishing item, but it certainly does not come close to being a priority factor.

The commenter stated that they are deeply concerned that, if this decision is not reversed, non-priority applicants will push aside priority applicants and one of the intended goals of the program will not be realized. The commenter strongly urged the Agency to issue a Final Rule that provides a real priority to the statutory priority classes. The commenter recommended that 25 percent of the total point value be assigned to statutory priorities, with review panels then assessing which projects best foster the priority for small and mid-sized family farms and beginning and Socially-Disadvantaged farmers and ranchers and providing evaluative ranking points accordingly.

Response: Through the 2008 Farm Bill, the Agency was instructed to give priority to certain categories of applicants. Giving priority does not mean that the program should only fund applications submitted by those groups, but rather, all things being equal, the applications from such groups should receive priority. The Final Rule does just that—making the priority groups eligible for points that are not available to applicants in non-priority groups. The distribution of points during application scoring process from the last few application rounds, since the Interim Rule was implemented, has resulted in the majority of awards being made to applicants from the priority categories. Thus, the Agency has not revised the distribution of points in response to this comment.

Rural Areas

Comment: Two commenters were concerned over the elimination in the Interim Rule of the potential for applicants to receive 10 points for being located in a rural area. While the commenters agree that VAPG projects cannot be strictly limited to rural areas, they disagree that the program should not prioritize rural projects.

Commenters indicated that there are good reasons to assign ranking points to projects that are located in rural areas, even if the markets they serve are both rural and urban. A key purpose of the program is to raise farm income and improve the economy in farming communities. This purpose can be legitimately advanced by providing some amount of ranking points to projects located in rural areas. Furthermore, when compared to urban agricultural producers, rural farmers and ranchers face heightened challenges in accessing markets for their products. The commenter recommended reinstating 10 points for rural projects, thus demonstrating a continued commitment to rural economic development.

A third commenter also opposed removing the priority points for rural projects, which is important, according to the commenter, to meeting the goals of the VAPG program.

Response: The statute does not include a rural area requirement for this program and it is the opinion of the agency that priority points for rural areas was not practical in the implementation of this program. Therefore, a rural requirement has never been implemented. And therefore, this provision does not provide priority points for rural projects.

I. Award Process (§ 4284.950)

The 2014 Farm Bill includes a provision that requires the Agency to give priority to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures whose projects (including farmer or rancher cooperative projects) best contribute to creating or increasing marketing opportunities for operators of Small- and Medium-size Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The Agency received comments from stakeholders on this provision during the April 25th listening session. In addition, the Agency received comments on very similar language the Agency included in the preamble to the Interim Rule. The following summarizes the comments on this provision and then presents the Agency's response as to how this provision is implemented in the Final Rule.

Comment: In commenting on the Interim Rule, one commenter stated that they had recommended that, when proposals are equally ranked, those targeting the VAPG priority groups—small and medium-sized family farms, beginning farmers and ranchers, and Socially-Disadvantaged farmers and ranchers—receive priority and commended its inclusion in the preamble to the Interim Rule. Without it also appearing in the rule itself, however, they fear it will be overlooked by review panels in the future. The commenter, therefore, recommended that the Agency incorporate language as a new subsection (b) in § 4284.942 and as a revision to subsection (a) in § 4284.950, as follows.

Response: The Agency has not revised the rule in response to these comments. The Administrator has the final authority and discretion in assigning points to any application based upon unserved or underserved areas; geographic diversity; emergency conditions and priority mission area plans, goals, and objectives. Based upon this authority, there would never be a need for breaking a tie in the manner suggested.

IV. 2014 Farm Bill Implementation

The 2014 Farm Bill required the Agency to make changes to the VAPG program in two areas regarding priority:

- Priority to Veteran Farmers and Ranchers
- Priority to Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures for projects that 'best contribute' to new or expanded marketing opportunities for Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, or operators of Small- and Medium-sized Family Farms and Ranches) The following paragraphs discuss how the Agency is implementing these priorities in the Final Rule.

A. Veteran Farmer or Rancher Priority

The 2014 Farm Bill added a new priority for Veteran Farmers and Ranchers. The definition of a Veteran Farmer or Rancher, as provided by the 2014 Farm Bill, is a farmer or rancher who has served in the Armed Forces, as defined in section 101(10) of title 38 United States Code, and who either has not operated a farm or ranch or has operated a farm or ranch for not more than 10 years.

To qualify for priority points for projects that contribute to increasing opportunities for Veteran Farmers and Ranchers, applicants must submit form DD–214, Report of Separation from the U.S. Military and meet the requirements for Beginning Farmers or Ranchers at 7 CFR 4284.922(d) and in the application guides, as well as all other program requirements.

B. Best Contributing Priority

The 2014 Farm Bill added a new priority for Agricultural Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant group) whose projects ''best contribute to creating or increasing marketing opportunities'' for operators

of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers (priority groups). Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points for this priority. If the application does not contain sufficient information, the Agency will not award points accordingly.

The Agency is implementing this priority by awarding up to 5 additional points based on documentation of the composition of the applicant's existing membership and anticipated expansion of membership as a way to assess creating or increasing marketing opportunities for the four priority groups. The Agency will use the following three criteria to award up to five points for this new priority.

1. If the existing membership of the applicant group is comprised of either more than 75 percent of any one of the four priority groups or more than 75 percent of any combination of the four priority groups, the application is eligible for two points.

2. If the existing membership of the applicant group is comprised of two or more of the priority groups, the application is eligible to receive one point. One point is awarded regardless of whether a group's membership is comprised of two, three, or all of the four priority groups.

3. If the proposed project in the applicant group's application will increase the number of priority groups that comprise the applicant group's membership by one or more priority group, the application is eligible to receive two points. However, if an applicant group's membership is already comprised of all four priority groups, such an applicant would not be eligible for points under this criterion because there is no opportunity to increase the number of priority groups. Note also that this criterion does not consider either the percentage of the existing membership that is comprised of the four priority groups or the number of priority groups currently comprising the applicant group's membership.

List of Subjects in 7 CFR Part 4284

Agricultural commodities, Grant programs, Housing and community development, Rural areas, Rural development, Value-added activities.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, chapter XLII of title 7 of the Code of Federal Regulations (CFR) is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

PART 4284—GRANTS

■ 1. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart F also issued under 7 U.S.C 1932(e). Subpart G also issued under 7 U.S.C 1926(a)(11). Subpart J also issued under 7 U.S.C. 1632(a). Subpart K also issued under 7 U.S.C. 1621 note.

■ 2. Part 4284 is amended by revising subpart J to read as follows:

Subpart J—Value-Added Producer Grant Program

General

Sec.

4284.901 Purpose.
4284.902 Definitions.
4284.903 Review or appeal rights.
4284.904 Exception authority.
4284.905 Nondiscrimination and compliance with other Federal laws.
4284.906 State laws, local laws, regulatory commission regulations.
4284.907 Environmental requirements.
4284.908 Compliance with other regulations.
4284.909 Forms, regulations, and instructions.
4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

4284.915 Notifications.
4284.916–4284.919 [Reserved]

Eligibility

4284.920 Applicant eligibility.
4284.921 Ineligible applicants.
4284.922 Project eligibility.
4284.923 Reserved funds eligibility.
4284.924 Priority scoring eligibility.
4284.925 Eligible uses of grant and matching funds.
4284.926 Ineligible uses of grant and matching funds.
4284.927 Funding limitations.
4284.928–4284.929 [Reserved]

Applying for a Grant

4284.930 Preliminary review.
4284.931 Application package.
4284.932 Simplified application.
4284.933 Filing instructions.
4284.934–4284.939 [Reserved]

Processing and Scoring Applications

4284.940 Processing applications.
4284.941 Application withdrawal.
4284.942 Proposal evaluation criteria and scoring applications.
4284.943–4284.949 [Reserved]

Grant Awards and Agreement

4284.950 Award process.
4284.951 Obligate and award funds.
4284.952–4284.959 [Reserved]

Post Award Activities and Requirements

4284.960 Monitoring and reporting program performance.
4284.961 Grant servicing.
4284.962 Transfer of obligations.
4284.963 Grant close out and related activities.
4284.964–4284.999 [Reserved]

General

§ 4284.901 Purpose.

This subpart implements the Value-Added Agricultural Product Market Development grant program (Value-Added Producer Grants (VAPG)) administered by the Rural Business-Cooperative Service whereby grants are made to enable viable Agricultural Producers (those who are prepared to progress to the next business level of planning for, or engaging in, Value-Added Agricultural Production) to develop businesses that produce and market Value-Added Agricultural Products and to create marketing opportunities for such businesses. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

§ 4284.902 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water, that the Independent Producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural food product. Agricultural food products can be raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption. These products cannot be animal feed, live animals (except for seafood products customarily sold and/or consumed live), non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Agricultural producer. (1) An individual or entity that produces an Agricultural Commodity through participation in the day-to-day labor, management, and field operations; or that has the legal right to harvest an Agricultural Commodity that is the subject of the VAPG project.

(2) The Agency shall determine the Agricultural producer status of Tribes and Tribal entities without regard to day-to-day labor, management, and field operation and right to harvest status.

Agricultural producer group. A non-profit membership organization that represents Independent Producers and whose mission includes working on behalf of Independent Producers and the majority of whose membership and board of directors is comprised of Independent Producers. The Independent Producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Applicant. The legal entity submitting an application to participate in the competition for program funding. The Applicant must be legally structured to meet one of the four eligible Applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture.

Beginning farmer or rancher. (1) For the purposes of determining eligibility to receive priority points under § 4284.924, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years.

(2) For the purposes of determining eligibility to receive funding reserved for Beginning Farmers and Ranchers under § 4284.923, a Beginning Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership comprised entirely of (*i.e.,* 100 percent) farmers or ranchers that have operated a Farm or Ranch for no more than 10 years.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including Pro Forma Financial Statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Venture. It may also contain background information about the organization or team attempting to reach those goals.

Change in physical state. An irreversible processing activity that alters the raw Agricultural Commodity into a marketable Value-Added Agricultural Product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale. Examples of eligible Value-Added Agricultural Products in this category include, but are not limited to, fish fillets, diced tomatoes, bio-diesel fuel, cheese, jam, and wool rugs. Examples of ineligible products include, but are not limited to, pressure-ripened produce; raw bottled milk; container grown trees; young plants, seedlings or plugs; and cut flowers.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and Matching Funds, Federal procurement standards apply to the use of grant funds for purchases and hires, and prohibit transactions that involve a real or apparent Conflict of Interest for owners, employees, officers, agents, or their Immediate Family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, grant and Matching Funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent Conflict of Interest, including, but not limited to, owner(s) and their Immediate Family members. See § 4284.925(a) and (b) for limited exceptions to this definition and practice for VAPG.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 2 CFR parts 200 and 400 and any successor regulations to these parts.

Emerging market. A new or developing, geographic or demographic market that is new to the Applicant or the Applicant's product. To qualify as new, the Applicant cannot have supplied this product, geographic, or demographic market for more than two years at time of application submission.

Family farm. A Farm (or Ranch) that produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence; whose owners are primarily responsible for daily physical labor and strategic management; whose hired help only supplements family labor; and, whose owners are related by blood or marriage or are Immediate Family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-based renewable energy. An Agricultural Commodity that is used to generate renewable energy on a Farm or Ranch owned or leased by the Independent Producer Applicant that produces the Agricultural Commodity, such that the generated renewable energy, is utilized in such a way that the applicant can demonstrate expanded customer base and increased revenues returning to the producers of the agricultural commodity as a result of the project. On-farm generation of energy from wind, solar, geothermal or hydro sources is not eligible for this program.

Farmer or rancher cooperative. A business owned and controlled by Independent Producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business. The Independent Producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Feasibility study. An analysis of the economic, market, technical, financial, and management capabilities of a proposed Project or business in terms of the Project's expectation for success.

Fiscal year. The Federal government's fiscal year.

Harvester. An Independent Producer of an Agricultural Commodity that is an individual or entity that can document that it has a legal right to access and harvest the majority of a primary Agricultural Commodity that will be used for the Value-Added Agricultural Product. Individuals and entities that merely glean, gather, or collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters and are not eligible for this program.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent Producer. (1) Individual Agricultural Producers or entities that are solely owned and controlled by Agricultural Producers. Independent

Producers must produce and own more than 50 percent of the Agricultural Commodity to which value will be added as the subject of the Project proposal. Independent Producers must maintain ownership of the Agricultural Commodity or product from its raw state through the production and marketing of the Value-Added Agricultural Product. Producers who produce the Agricultural Commodity under contract for another entity, but do not own the Agricultural Commodity or Value-Added Agricultural Product produced, are not considered Independent Producers. Entities that contract out the production of an Agricultural Commodity are not considered Independent Producers. Independent Producer entities must confirm their owner members as eligible and must identify them by name or class.

(2) A Steering Committee must apply as an Independent Producer and form a program-eligible legal entity prior to execution of the grant agreement by the Agency. The Steering Committee and entity subsequently formed must meet all other program eligibility requirements.

(3) A Harvester must apply as an Independent Producer because harvester operations do not meet the definition requirements for a Farm or Ranch. Harvester applicants are therefore not eligible to receive Reserved Funds and/or Priority Points for a Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, operator of a Small- or Medium-sized farm or ranch that is structured as a Family Farm, or a Farmer or Rancher Cooperative, but may request Reserved Funds and/or Priority Points for qualified Mid-Tier Value Chain projects.

(4) The Agency shall determine the Independent Producer status of Tribes or Tribal entities without regard to ownership of the commodity to which value will be added so long as the tribal member participant, tribal entity and/or Tribe own and control at least 50 percent of the raw commodity necessary for the project, per the definition of Independent Producer in § 4284.902.

Local or regional supply network. An interconnected group of individuals and/or entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include Agricultural Producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Locally-produced Agricultural Food Product. Any Agricultural Food Product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except Farmer or Rancher Cooperatives) in which more than 50 percent of the financial ownership and voting control is held by Independent Producers. Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.

Marketing plan. A plan for the project that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent Conflict of Interest, that are used for eligible project purposes during the grant funding period. Matching Funds must be at least equal to the grant amount, and combined grant and Matching Funds must equal 100 percent of the Total Project Costs. All Matching Funds must be provided for in the approved budget, must be necessary and reasonable for accomplishment of project or program objectives and can be verified by authentic documentation from the source as part of the application. Matching Funds must be provided in the form of confirmed Applicant cash, loan, or line of credit, or provided in the form of a confirmed Applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.925(a) and (b); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). Matching funds cannot be paid by the Federal Government under another Federal award and are not included as contributions for any other Federal Award. See examples of ineligible Matching Funds and Matching Funds verification requirements in §§ 4284.926 and 4284.931.

Medium-sized farm or ranch. A Farm or Ranch that is structured as a Family Farm that has averaged $500,001 to $1,000,000 in annual gross sales of agricultural commodities in the previous three years.

Mid-tier value chain. Local and regional supply networks that link Independent Producers with businesses, cooperatives, or consumers that market Value-Added Agricultural Products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of Small- and Medium-sized Farms or Ranches that are structured as a Family Farm; and

(2) Obtains agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture that is engaged in the value chain on a marketing strategy.

(3) For Mid-tier Value Chain projects, the Agency recognizes that, in a supply chain network, a variety of raw Agricultural Commodity and Value-Added Agricultural Product ownership and transfer arrangements may be necessary. Consequently, Applicant ownership of the raw Agricultural Commodity and Value-Added Agricultural Product from raw through value-added stages is not necessarily required, as long as the Mid-tier Value Chain application can demonstrate an increase in customer base and an increase in revenue returns to the Applicant producers supplying the majority of the raw Agricultural Commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added Venture, and specifically for the purpose of paying for conducting and developing a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-Added Agricultural Product.

Produced in a manner that enhances the value of the Agricultural Commodity. The use of a recognizably coherent set of agricultural production practices in the growing or raising of the raw commodity, such that a differentiated market identity is created for the resulting product. Examples of eligible products in this category include, but are not limited to, sustainably grown apples, eggs produced from free-range chickens, or organically grown carrots.

Physical segregation. Separating an Agricultural Commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a

manner that results in the enhancement of the value of the separated commodity or product. An example of a segregated product is non-GMO corn separated from GMO corn.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the Business Plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three years in the form of cash flow statements, income statements, and balance sheets.

Project. All of the eligible activities to be funded by the grant under this subpart and Matching Funds.

Qualified consultant. An independent, third-party, without a Conflict of Interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Small-sized farm or ranch. A Farm or Ranch that is structured as a Family Farm that has averaged $500,000 or less in annual gross sales of agricultural products in the previous three years.

Socially-disadvantaged farmer or rancher. This term has the meaning given in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a ''Socially-Disadvantaged Group.''

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, if there are multiple farmer or rancher owners of the Applicant organization, more than 50 percent of the ownership must be held by members of a Socially-Disadvantaged Group.

(2) For the purposes of determining eligibility to received funding reserved for Socially-Disadvantaged Farmers and Ranchers under § 4284.923, if there are multiple farmer or rancher owners of the Applicant organization, all farmer and rancher owners (*i.e.,* 100 percent) must be members of a Socially-Disadvantaged Group.

Socially-Disadvantaged group. A group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State office. USDA Rural Development offices located in each State.

Steering committee. An unincorporated group comprised wholly of specifically identified Independent Producers in the process of organizing one of the four program eligible entity types (Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative or Majority-Controlled Producer-Based Business Venture.

Total project cost. The sum of all grant and Matching Funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any Agricultural Commodity produced in the U.S. (including the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa), that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The Agricultural Commodity must meet one of the following five value-added methodologies:

(i) Has undergone a Change in Physical State;

(ii) Was Produced in a Manner that Enhances the Value of the Agricultural Commodity;

(iii) Is Physically Segregated in a manner that results in the enhancement of the value of the Agricultural Commodity;

(iv) Is a source of Farm- or Ranch-based Renewable Energy, including E–85 fuel; or

(v) Is aggregated and marketed as a Locally-Produced Agricultural Food Product.

(2) As a result of the Change in Physical State or the manner in which the Agricultural Commodity was produced, marketed, or segregated:

(i) The customer base for the Agricultural Commodity is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the Agricultural Commodity is available to the producer of the commodity.

Venture. The business and its value-added undertakings, including the project and other related activities.

Veteran farmer or rancher. A farmer or rancher who has served in the Armed Forces, as defined in section 101(10) of title 38 United States Code, and who either has not operated a Farm or Ranch or has operated a Farm or Ranch for not more than 10 years.

(1) For the purposes of determining eligibility to receive priority points under § 4284.924, a Veteran Farmer or Rancher is either:

(i) An individual Independent Producer (other than a Harvester) that has either never operated a Farm or Ranch or has operated a Farm or Ranch for no more than 10 years or

(ii) An eligible Applicant entity, other than a Harvester, that has an Applicant ownership or membership of more than 50 percent Veteran Farmers or Ranchers each of whom have either never operated a Farm or Ranch or operated a Farm or Ranch for no more than 10 years.

(2) [Reserved]

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the Value-Added Agricultural Product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility.* No exception to Applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable Federal laws, including the Equal

Employment Opportunities Act of 1972, the Americans with

Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) *Nondiscrimination.* The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any Applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance.* Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E. For grants, compliance reviews will be conducted after the grantee signs the applicable Assurance Agreement, and after the last disbursement of grant funds have been made and the facility or program has been in full operations for 90 days.

(d) *Executive Order 12898.* When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. Civil Rights certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940. Applications for both Planning and Working Capital grants are generally excluded from the environmental review process by 7 CFR 1940.333.

§ 4284.908 Compliance with other regulations.

(a) *Departmental regulations.* Applicants must comply with all applicable Departmental regulations and Office of Management and Budget regulations concerning grants in 2 CFR chapter IV.

(b) *Cost principles.* Applicants must comply with the cost principles found in 2 CFR parts 200, subpart E, 2 CFR part 400, and in 48 CFR subpart 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR parts 200 through 400 or 48 CFR subpart 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency's Web site and at any Rural Development office.

§§ 4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue public notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level, the minimum and maximum grant amounts, and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes.* The Agency will issue notifications of any programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) Priority categories to be used for awarding Administrator or State Director points, which may include any of the following:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) Priority mission area plans, goals, and objectives.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any application filing instructions specified in § 4284.933.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) of this section in one or more **Federal Register** notices. If a funding level is not known at the time of notification, it will be posted to the program Web site once an appropriation is enacted. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will issue notices under this section as follows:

(1) The Agency will make the information specified in paragraph (a) of this section available each Fiscal Year.

(2) The Agency will make the information specified in paragraph (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

Eligibility

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an Applicant must demonstrate that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of Applicant.* The Applicant, including any Federally-recognized Tribes and tribal entities (Rural Development State Offices and posted application guidelines will provide additional information on Tribal eligibility), must demonstrate that they meet all definition requirements for one of the following Applicant types:

(1) An Independent Producer;

(2) An Agricultural Producer Group;

(3) A Farmer or Rancher Cooperative; or

(4) A Majority-Controlled Producer-Based Business Venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.* (1) Individual Applicants must certify that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa; or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must certify that they are more than 50 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S.

(d) *Legal authority and responsibility.* Each Applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant, and they must evidence good standing from the appropriate State agency or equivalent.

(e) *Multiple grant eligibility.* An Applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Multiple applications from separate entities with identical or greater than 75 percent common ownership, or from a parent, subsidiary or affiliated organization (with ''affiliation'' defined by Small Business Administration regulation 13 CFR 121.103, or successor regulation) are not permitted. Further, Applicants who have already received a Planning Grant for the proposed project cannot receive another Planning Grant for the same project. Applicants who have already received a Working Capital Grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant.* If an Applicant has an active value-added grant at the time of a subsequent application, the currently active grant must be closed out within 90 days of the application submission deadline for the subsequent competition, as published in the annual solicitation.

§ 4284.921 Ineligible Applicants.

(a) Consistent with the Departmental Regulations, an Applicant is ineligible if the Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

(b) An Applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Product eligibility.* Each product that is the subject of the proposed project must meet the definition of a Value-Added Agricultural Product

(b) *Purpose eligibility.* (1) The grant funds requested must not exceed any maximum amounts specified in the annual solicitation for Planning and Working Capital Grant requests, per § 4284.915.

(2) The Matching Funds required for the project budget must be eligible and without a real or apparent Conflict of Interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.925, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject Value-Added Agricultural Product, to be demonstrated in the required work plan and budget as described at § 4284.922(b)(5).

(4) Applications that propose ineligible expenses in excess of 10 percent of Total Project Costs will be deemed ineligible to compete for funds. Applicants who submit applications containing ineligible expenses totaling less than 10 percent of Total Project Costs must remove those expenses from the project budget or replace with eligible expenses, if selected for an award.

(5) The project work plan and budget must demonstrate eligible sources and uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the Value-Added Agricultural Product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or conducting the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and Matching Funds for all activities and tasks specified in the budget; and indicate that Matching Funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the start date range specified in the annual solicitation, concludes not later than 36 months after the proposed start date, and is scaled to the complexity of the project.

(6) Except as noted in paragraphs (b)(6)(i) and (ii) of this section, working capital applications must include a Feasibility Study and Business Plan completed specifically for the proposed value-added project by a Qualified Consultant. The Agency must concur in the acceptability or adequacy of the Feasibility Study and Business Plan for eligibility purposes.

(i) An Independent Producer Applicant seeking a Working Capital Grant of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing Value-Added Agricultural Product(s) that they currently own and produce from at least 50 percent of their own Agricultural Commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a Business Plan or Marketing Plan for the value-added project in lieu of a Feasibility Study. The Applicant must still adequately document increased customer base and increased revenues returning to the Applicant producers as a result of the project in their application, and meet all other eligibility requirements. Further, the waiver of the independent Feasibility Study does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by an independent Feasibility Study, so Applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(ii) All four Applicant types that submit a Simplified Application for Working Capital Grant funds of less than $50,000 are not required to provide an independent Feasibility Study or Business Plan for the Project/Venture, but must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer Applicants

supplying the majority of the Agricultural Commodity for the project. All other eligibility requirements remain the same. The waiver of the requirement to submit a Feasibility Study and Business Plan does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by a Feasibility Study or Business Plan, so Applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(7) All applicants applying for Working Capital Grant funds must document the quantity of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product, expressed in an appropriate unit of measure (pounds, tons, bushels, etc.) to demonstrate the scale of the applicant's project. This quantification must include an estimated total quantity of the Agricultural Commodity needed for the project, the quantity that will be provided (produced and owned) by the Agricultural Producers of the applicant organization, and the quantity that will be purchased or donated from third-party sources.

(8) All Applicants requesting Working Capital grant funds must either be currently marketing each Value-added Agricultural Product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

§ 4284.923 Reserved funds eligibility.

The Applicant must meet the requirements specified in this section, as applicable, if the Applicant chooses to compete for reserved funds. A Harvester is not eligible to compete for reserved funds under paragraph (a) of this section, but is eligible to compete for reserved funds under paragraph (b) of this section. In accordance with application deadlines, all eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same Fiscal Year, as funding levels permit.

(a) If the Applicant is applying for Beginning Farmer or Rancher or Socially-Disadvantaged Farmer or Rancher reserved funds, the Applicant must provide the following documentation to demonstrate that the applicant meets all of the requirements for the applicable definition found in § 4284.902.

(1) For beginning farmers and ranchers (including veterans), documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

(2) For Socially-Disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a Socially-Disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a Socially-Disadvantaged group. All farmer and rancher owners must be members of a Socially-Disadvantaged group.

(b) If the Applicant is applying for Mid-Tier Value Chain reserved funds, the Applicant must be one of the four VAPG Applicant types. The application must:

(1) Provide documentation demonstrating that the project meets the definition of Mid-Tier Value Chain;

(2) Demonstrate that the project proposes development of a Local or Regional Supply Network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which agricultural commodities and Value-Added Agricultural Products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, either by name or by class, and its purpose;

(3) Describe at least two alliances, linkages, or partnerships within the value chain that link Independent Producers with businesses, cooperatives, or consumers that market value-added agricultural commodities or Value-Added Agricultural Products in a manner that benefits Small- or Medium-sized Farms and Ranches that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(4) Demonstrate how the project, due to the manner in which the Value-Added Agricultural Product is marketed, will increase the profitability and competitiveness of at least two, eligible, Small- or Medium-sized Farms or Ranches that are structured as a Family Farm, including documentation to confirm that the participating Small- or Medium-sized Farms or Ranches are structured as a Family Farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms or appropriate certifications evidencing eligible farm income is sufficient.

(5) Document that the eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture Applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible Independent Producer Applicant has obtained at least one agreement from an eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture engaged in the value-chain on a marketing strategy;

(i) For Planning Grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

(ii) Independent Producer Applicants must provide documentation to confirm that the non-applicant Agricultural Producer Group/Farmer or Rancher Cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw Agricultural Commodity for the project;

(6) Demonstrate that the members of the Applicant organization that are benefiting from the proposed project currently own and produce more than 50 percent of the raw Agricultural Commodity that will be used for the Value-Added Agricultural Product that is the subject of the proposal; and

(7) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the Applicant producers supplying the majority of the raw Agricultural Commodity for the project.

§ 4284.924 Priority scoring eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: Propose projects

that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm; or propose Mid-Tier Value Chain projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain project.

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide the documentation specified in § 4284.923(a)(1) or (2), as applicable, and must submit form DD–214, ''Report of Separation from the U.S. Military,'' or subsequent form.

(c) Applicants seeking priority points as Operators of Small- or Medium-sized Farms or Ranches that are structured as a Family Farm must:

(1) Be structured as a Family Farm;

(2) Meet all requirements in the associated definitions; and

(3) Provide the following documentation:

(i) A description from the individual owner(s) of the Applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm or ranch in the previous three years, not to exceed $500,000 for operators of small-sized farms or ranches or $1,000,000 for operators of medium-sized farms or ranches;

(ii) The names and identification of the blood or marriage relationships of all Applicant/owners of the farm; and

(iii) A statement that the Applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

(d) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible Applicant types and provide the documentation specified in § 4284.923(b)(1) through (7), demonstrating that the project meets the Mid-Tier Value Chain definition.

(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(1) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the State in which it operates as a cooperatively operated business;

(2) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including that each member is an individual Agricultural Producer, or an entity that is solely owned and controlled by Agricultural Producers, that substantially participates in the production of the majority of the Agricultural Commodity to which value will be added; and

(3) Provide evidence of ''good standing'' as a cooperatively operated business in the State of incorporation or operations, as applicable.

(f) Applicants applying as Agricultural Producer Groups, Farmer and Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for projects that ''best contribute to creating or increasing marketing opportunities'' for operators of Small- and Medium-sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. The annual solicitation and Agency application package will provide instructions and documentation requirements for group Applicants to apply for these additional priority points.

§ 4284.925 Eligible uses of grant and Matching Funds.

In general, grant and cost-share Matching Funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning Grant funds may be used to pay for a Qualified Consultant to conduct and develop a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-added Agricultural Product.

(1) Planning Grant funds may not be used to compensate Applicants or family members for participation in Feasibility Studies.

(2) In-kind contribution of Matching Funds to cover Applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the Total Project Costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the Value-Added Agricultural Product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the Value-Added Agricultural Product.

(1) Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership or Immediate Family interest to process and/or market and deliver the Value-Added Agricultural Product to consumers, paying for raw commodity inventory (less than 50 percent of the amount required for the project) from an unaffiliated third party, necessary to produce the Value-Added Agricultural Product, and paying for a marketing campaign for the Value-Added Agricultural Product.

(2) In-kind contributions may include appropriately valued inventory of raw commodity to be used in the project. In-kind contributions of Matching Funds may also include contributions of time spent on eligible tasks by Applicants or Applicant family members so long as the value of such contribution does not exceed a maximum of 25 percent of the Total Project Costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc. is provided. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.926 Ineligible uses of grant and Matching Funds.

Federal procurement standards prohibit transactions that involve a real or apparent Conflict of Interest for owners, employees, officers, agents, or their Immediate Family members having a personal, professional, financial or other interest in the outcome of the project; including organizational conflicts, and conflicts that restrict open and free competition for unrestrained trade. In addition, the use of funds is

limited to only the eligible activities identified in § 4284.925 and prohibits other uses of funds. Ineligible uses of grant and Matching Funds awarded under this subpart include, but are not limited to:

(a) Support costs for services or goods going to or coming from a person or entity with a real or apparent Conflict of Interest, except as specifically noted for limited in-kind Matching Funds in § 4284.925(a) and (b);

(b) Pay costs for scenarios with noncompetitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the Value-Added Agricultural Product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 2 CFR parts 200 through 400, and 48 CFR subpart 31.2;

(k) Fund architectural or engineering design work;

(l) Fund expenses related to the production of any Agricultural Commodity or product, including, but not limited to production planning, purchase of seed or rootstock or other production inputs, labor for cultivation or harvesting crops, and delivery of raw commodity to a processing facility;

(m) Conduct activities on behalf of anyone other than a specifically identified Independent Producer or group of Independent Producers, as identified by name or class. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(n) Pay for goods or services from a person or entity that employs the owner or an Immediate Family member;

(o) Duplicate current services or replace or substitute support previously provided;

(p) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(q) Pay any judgment or debt owed to the United States;

(r) Purchase land;

(s) Pay for costs associated with illegal activities; or

(t) Purchase the Agricultural Commodity to which value will be added (raw commodity) from the applicant entity; applicant-owned or related entity, or members of the applicant entity.

§ 4284.927 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the Total Project Costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant shall have a term that does not exceed 3 years, and a project start date within 90 days of the date of award, unless otherwise specified in a notice pursuant to § 4284.915. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to Majority-Controlled Producer-Based Business Ventures may not exceed 10 percent of the total funds obligated under this subpart during any Fiscal Year.

(e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to Independent Producers and processors.

(f) Each Fiscal Year, the following amounts of reserved funds will be made available:

(1) 10 percent of total program funding to fund projects that benefit Beginning Farmers or Ranchers or Socially-Disadvantaged Farmers or Ranchers; and

(2) 10 percent of total program funding to fund projects that propose development of Mid-tier Value Chains.

(3) Funds not obligated by June 30 of each Fiscal Year shall be available to the Secretary to make grants under this subpart to eligible applicants in the general funds competition.

§§ 4284.928–4284.929 [Reserved]

Applying for a Grant

§ 4284.930 Preliminary review.

The Agency encourages Applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss Applicant and Project eligibility potential. At its option, the Agency may establish a preliminary review deadline in accordance with § 4284.915, so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency.

§ 4284.931 Application package.

All Applicants are required to submit a complete application package that is comprised of all of the elements in this section.

(a) *Application forms.* The application must include all forms listed in the annually published notice for the program. The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) ''Application for Federal Assistance.''

(2) ''Budget Information-Non-Construction Programs.''

(3) ''Assurances—Non-Construction Programs.''

(4) All Applicants (including individuals and sole proprietorships) are required to have a DUNS number and maintain registration with the System for Award Management (SAM).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* The Applicant must demonstrate in detail how the:

(i) Applicant eligibility requirements in §§ 4284.920 and 4284.921 are met;

(ii) Project eligibility requirements in § 4284.922 are met;

(iii) Eligible use of grant and Matching Funds requirements in §§ 4284.925 and 4284.926 are met; and

(iv) Funding limitation requirements in § 4284.927 are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the Applicant must address each evaluation criterion identified below.

(i) *Performance Evaluation Criteria.* The overall goal of this program and the projects it supports is to create and serve new markets, with a resulting increase in jobs, customer base and revenues returning to the producer. Applicants must provide specific information about plans to track and evaluate progress toward these outcomes as a way for the Agency to ascertain whether or not the primary program goals and project goals proposed in the work plan are likely to be accomplished during the project

period. The application package will provide additional instruction to assist Applicants when responding to this criterion. The required data, including accomplishments as outlined in § 4284.960 and Applicant-suggested performance criteria, will be incorporated into the Applicant's semi-annual and final reporting requirements if selected for award, and will be specified in the grant agreement associated with each award. At a minimum, data included in each application submission must include both target outcomes and timeframes for achieving results:

(A) The number of jobs anticipated to be created or saved as a direct result of the project.

(B) The current baseline number of customers.

(C) The estimated expansion of customer base as a direct result of the project.

(D) The current baseline of revenue.

(E) The estimated increase in revenue as a direct result of the project.

(F) Applicants for both Working Capital and Planning Grants are invited to suggest additional benchmarks for evaluation that are specific to proposed project activities or outcomes and the corresponding timeframes for accomplishing them; these should be informed by the program objectives, stated above, related to new markets, expansion of customer base, and revenues returning to producer Applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period.

(ii) *Proposal evaluation criteria.* Applicants for both Planning and Working Capital Grants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of Matching Funds.* Using the format prescribed by the application package, Applicants must certify that:

(i) Cost-share Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement; and

(ii) If Matching Funds are proposed in an amount exceeding the grant amount, those Matching Funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share Matching Funds.* Using the format prescribed by the application package, the Applicant must demonstrate and provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in § 4284.902, as well as the following criteria:

(i) Except as provided at § 4284.925(a) and (b), Matching Funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant funding period.

(ii) Matching Funds must be from eligible sources without a real or apparent Conflict of Interest.

(iii) Matching Funds must be at least equal to the amount of grant funds requested, and combined grant and Matching Funds must equal 100 percent of the Total Project Costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as Matching Funds.

(v) Matching Funds must be provided in the form of confirmed Applicant cash, loan, or line of credit; or provided in the form of a confirmed Applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.925(a) and (b); or provided in the form of confirmed third-party cash or eligible third-party in-kind contribution; or non-federal grant sources (unless otherwise provided by law).

(vi) Examples of ineligible Matching Funds include funds used for an ineligible purpose, contributions donated outside the proposed grant funding period, applicant and third-party in-kind contributions that are over-valued, or are without substantive documentation for an independent reviewer to confirm a valuation, conducting activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers, expected program income at time of application, or instances where a real or apparent Conflict of Interest exists, except as detailed in § 4284.925(a) and (b).

(5) *Business plan.* For Working Capital Grant applications, Applicants must provide a copy of the Business Plan that was completed for the proposed value-added Venture, except as provided for in §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the Business Plan. For all planning grant applications including those proposing product eligibility under ''Produced in a Manner that Enhances the Value of the Agricultural Commodity,'' a Business Plan is not required as part of the grant application.

(6) *Feasibility study.* As part of the application package, Applicants for Working Capital Grants must provide a copy of the third-party Feasibility Study that was completed for the proposed value-added project, except as provided for at §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the Feasibility Study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual solicitation issued pursuant to § 4284.915. Applicants requesting Working Capital Grants of less than $50,000 are not required to provide Feasibility Studies or Business Plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the Agricultural Commodity as a result of the project. See § 4284.922(b)(6)(ii).

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before the application deadline established for a Fiscal Year to be considered for funding for that Fiscal Year. Applications received by the Agency after the application deadline established for a Fiscal Year will not be considered. Revisions or additional information will not be accepted after the application deadline.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in *http://www.rurdev.usda.gov/BCP_VAPG.html.*

§§ 4284.934–4284.939 [Reserved]

Processing and Scoring Applications

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each Fiscal Year, the Agency will conduct a review to determine if the Applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the Applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the Applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by Applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the Applicant that their application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the Applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the Applicant must notify the Agency in writing if the project is no longer viable or the Applicant no longer is requesting financial assistance for the project. When the Applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the Applicant and project are eligible, the application is complete and sufficiently responsive to program requirements. Any Applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a Fiscal Year will be scored in the Fiscal Year in which it was received. Each application will be scored based on the information provided and adequately referenced in the scoring section of the application at the time the Applicant submits the application to the Agency. Scoring information must be readily identifiable in the application or it will not be considered.

(b) *Scoring Applications.* The criteria specified in paragraphs (b)(1) through (6) of this section will be used to score all applications. For each criterion, Applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points that will be awarded to an application is 100. Points may be awarded lump sum or on a graduated basis. The Agency application package will provide additional instruction to assist Applicants when responding to the criteria below.

(1) *Nature of the Proposed Venture (graduated score 0–30 points).* Describe the technological feasibility of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the Value-Added Agricultural Product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw Agricultural Commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points).* Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (Applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of Independent Producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), Applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the

activities and allocate those costs among the listed tasks. The source and use of both grant and Matching Funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and Matching Funds are being used for qualified purposes and are from eligible sources without a Conflict of Interest. It is recommended that Applicants utilize the budget format templates provided in the Agency's application package.

(5) *Priority Points (up to 10 points).* Priority points may be awarded in both the General Funds competition and the Reserved Funds competitions. Qualifying applications may be awarded priority points under paragraphs (b)(5)(i) and (ii) of this section, for up to a total of 10 points.

(i) *Priority categories (lump sum score of 0 or 5 points).* Qualifying Applicants may request priority points under this paragraph if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.924, as applicable. Priority categories are: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, Operator of a Small- or Medium-sized Farm or Ranch that is structured as a Family Farm, Mid-Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that Applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.924. Applications from qualifying priority categories will be awarded 5 points. Applicants will not be awarded more than 5 points even if they qualify for more than one of the priority categories.

(ii) *Best contributing (up to 5 points).* Applications from Agricultural Producer Groups, Farmer or Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures (applicant groups) may be awarded up to 5 additional points for contributing to the creation of or increase in marketing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or Operators of a Small- or Medium-sized Farm or Ranch that are structured as a Family Farm (priority groups). Applicant groups must submit documentation on the percentage of existing membership that is comprised of one or a combination of the above priority groups and on the anticipated expansion of membership to one or more additional priority groups. Applications must contain sufficient information as described in the annual solicitation and application package to enable the Agency to make the appropriate determinations for awarding points. If the application does not contain sufficient information, the Agency will not award points accordingly.

(6) *Priority Categories (graduated score 0–10 points).* Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator or State Director has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a Fiscal Year. In the event of a National competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

§§ 4284.943–4284.949 [Reserved]

Grant Awards and Agreement

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same Fiscal Year. Higher scoring applications will receive first consideration for funding. The Agency may set a minimally acceptable score for funding, which will be noted in the published program notice. The Agency will notify Applicants, in writing, whether or not they have been selected for funding. For those Applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the Fiscal Year in which it was submitted will not be carried forward into the next Fiscal Year. The Agency will notify the Applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the Applicant with a written notice to that effect. This is prior to the signing of a Grant Agreement. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Obligate and award funds.

(a) *Letter of conditions.* When an application is selected subject to conditions established by the Agency, the Agency will notify the Applicant using a Letter of Conditions, which defines the conditions under which the grant will be made. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of the award. If the Applicant agrees with the conditions, the Applicant must complete, an applicable Letter of Intent to Meet Conditions. If the Applicant believes that certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the Applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation.* The grantee will execute additional documentation in order to obligate the award of funds; including, but not limited to:

(1) ''Request for Obligation of Funds;''

(2) ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;''

(3) ''Certification Regarding Drug-Free Workplace Requirements;''

(4) ''Assurance Agreement (under Title VI, Civil Rights Act of 1964);''

(5) ''ACH Vendor/Miscellaneous Payment Enrollment Form;'' or

(6) ''Disclosure of Lobbying Activities.''

(d) *Grant disbursements.* Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable.

§§ 4284.952–4284.959 [Reserved]

Post Award Activities and Requirements

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions. Grantees will expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit narrative and financial performance reports, as prescribed by the Agency in the grant agreement, that include required data elements related to achieving programmatic objectives and a comparison of accomplishments with the objectives stated in the application. At a minimum, these include comparisons of anticipated activies and outcomes and timeframes for achieving:

(1) Expansion of customer base as a result of the project;

(2) Increased revenue returned to the producer as a result of the project;

(3) Jobs created or saved as a result of the project;

(4) Evidence of receipt of matching funds, if included or provided for in project.

(i) Semi-annual performance reports shall be submitted within 45 days following March 31 and September 30 each Fiscal Year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(ii) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(iii) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a Feasibility Study, Marketing Plan, Business Plan, success story, distribution network study, or best practice.

(iv) The Agency may request any additional project and/or performance data for the project for which grant funds have been received, including but not limited to:

(A) Information that will enable evaluation of the economic impact of program awards, such as:

(*1*) Business starts and clients served;

(*2*) Data associated with producer market expansion, new market penetration, and changes in customer base or revenues.

(B) Information that would promote greater understanding of the key determinants of the success of individual projects or inform program administration and evaluation, such as:

(*1*) The producer's experience related to financial management, budgeting, and running a business enterprise.

(*2*) The nature of, and advantages or disadvantages of, supply chain arrangements or equitable distribution of rewards and responsibilities for Mid-tier Value Chain projects; and

(*3*) Recommendations from Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or Veteran Farmers or Ranchers.

(C) Information that would inform or enable the aggregation of data for program administration or evaluation purposes.

(v) The Agency may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an Applicant may be transferred to a different (substituted) Applicant provided:

(a) The substituted Applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original Applicant; and

(3) Has the authority to receive the assistance approved for the original Applicant; and

(b) The project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§§ 4284.963–4284.999 [Reserved]

Dated: April 28, 2015.

Lisa Mensah,

Under Secretary, Rural Development.

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Part V

The President

Notice of May 6, 2015—Continuation of the National Emergency With Respect to Actions of the Government of Syria

Federal Register
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Presidential Documents

Title 3—

The President

Notice of May 6, 2015

Continuation of the National Emergency With Respect to Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order (E.O.) 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, E.O. 13338 authorized the blocking of property of certain persons and prohibited the exportation or re-exportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in E.O. 13399 of April 25, 2006, E.O. 13460 of February 13, 2008, E.O. 13572 of April 29, 2011, E.O. 13573 of May 18, 2011, E.O. 13582 of August 17, 2011, E.O. 13606 of April 22, 2012, and E.O. 13608 of May 1, 2012.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also is generating instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical and biological weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in E.O. 13338; on April 25, 2006, in E.O. 13399; on February 13, 2008, in E.O. 13460; on April 29, 2011, in E.O. 13572; on May 18, 2011, in E.O. 13573; on August 17, 2011, in E.O. 13582; on April 22, 2012, in E.O. 13606; and on May 1, 2012, in E.O. 13608; must continue in effect beyond May 11, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Asad regime's use of brutal violence and human rights abuses and calls on the Asad regime to stop its violence against the Syrian people and allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 6, 2015.

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