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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 80 Monday,
No. 128 July 6, 2015

Pages 38391–38612

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2435; Directorate Identifier 2015–CE–020–AD; Amendment 39–18197; AD 2015–13–10]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–17–07 for certain M7 Aerospace LLC (type certificate previously held by M7 Aerospace LP) Models SA226–T, SA226–T(B), SA226–TC, and SA226–AT airplanes. AD 2011–17–07 required repetitive replacement and inspection of certain elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables, and checking and setting of flight control cable tension. This AD requires repetitively inspecting and replacing the primary flight control rudder cables, repetitively replacing all other primary flight control and trim tab cables, and checking/setting the flight control cable tension. This AD was prompted by a report of extensive damage found on the left hand primary flight control rudder cable located under the cockpit floor on one of the airplanes affected by AD 2011–17–07. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective July 21, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 21, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 1, 2011 (76 FR 50881, August 17, 2011).

We must receive any comments on this AD by August 20, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2435.

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–2015–2435; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August 2, 2011, we issued AD 2011–17–07, Amendment 39–16771 (76 FR 50881, August 17, 2011), (''AD 2011–17–07''), for certain M7 Aerospace LLC (type certificate previously held by M7 Aerospace LP) Models SA226–T, SA226–T(B), SA226–TC, and SA226–AT airplanes. AD 2011–17–07 required repetitive replacement and inspection of certain elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables, and checking and setting of flight control cable tension. AD 2011–17–07 resulted from a report that the left-hand primary rudder control cable on a Model SA226–T airplane failed where the cable makes a 30 degree angle over a small pulley to accommodate re-routing of the control cable alongside the camera system installed in the center of the cabin.

We issued AD 2011–17–07 to prevent failure of a rudder, aileron and/or elevator control cable.

Actions Since AD 2011–17–07 Was Issued

Since we issued AD 2011–17–07, extensive damage to the left hand (LH) primary flight control rudder cable was found under the cockpit floor on one of the airplanes affected by AD 2011–17–07. Inspection of the cable revealed five of the seven wires that make up the LH cable were broken adjacent to the pulley at FS126.06. A follow-on inspection of the right hand (RH) primary flight control rudder cable also showed several strands of some of the 7 x 19 cable wires were broken at the same RH FS126.06 pulley location. Both cables had been replaced at 1,513 hours time-in-service (TIS) before the finding of the broken cables to comply with the 3,500-hour TIS replacement time required in AD 2011–17–07.

We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011, and M7 Aerospace SA226 Series Service Letter 226–SL–050, issued April 15, 2015. The service

information describes procedures for repetitively inspecting and replacing all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables. 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 AD.

FAA's Determination

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

AD Requirements

This AD retains the actions previously required in AD 2011–17–07 and adds new inspection and replacement requirements for the LH and RH primary flight control rudder cables.

Differences Between This AD and the Service Information

M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011, requires replacing the LH and the RH primary flight control rudder cables every 3,500 hours TIS. This AD requires inspecting the LH and the RH primary flight control rudder cables every 200 hours TIS and requires replacing the LH and the RH primary flight control rudder cables every 800 hours TIS.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include Docket No. FAA–2015–2435 and Directorate Identifier 2015–CE–020–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

There are no affected airplanes currently on the U.S. registry. However, if an airplane affected by this AD were to become a U.S.-registered airplane, we estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables.	100 work-hours × $85 per hour = $8,500.	Not Applicable	$8,500	None to date.
Replacement of all elevator, rudder, aileron, and aileron-to-rudder interconnect primary control cables.	180 work-hours × $85 per hour = $15,300.	$18,800	34,100	None to date.
Check (set) flight control cable tension	25 work-hours × $2,125	Not Applicable	2,125	None to date.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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) 2011–17–07, Amendment 39–16771 (76

FR 50881, August 17, 2011) and adding the following new AD:

2015–13–10 M7 Aerospace LLC (type certificate previously held by M7 Aerospace LP): Amendment 39–18197; Docket No. FAA–2015–2435; Directorate Identifier 2015–CE–020–AD.

(a) Effective Date

This AD is effective July 21, 2015.

(b) Affected ADs

(1) This AD supersedes AD 2011–17–07, Amendment 39–16771 (76 FR 50881, August 17, 2011) (''AD 2011–17–07'').

(2) AD 87–02–02, Amendment 39–5518 (52 FR 2511, January 23, 1987) relates to the subject of this AD.

(c) Applicability

This AD applies to the following M7 Aerospace LLC airplanes, certificated in any category, as identified in table 1 of paragraph (c) of this AD:

TABLE 1 OF PARAGRAPH (C) OF THIS AD—APPLICABILITY

Model	Serial numbers
SA226–T	T265, T267
SA226–T(B)	T(B)348
SA226–TC	TC277
SA226–AT	AT071, AT072, AT073

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report of extensive damage found to the left hand primary flight control rudder cable located under the cockpit floor on one of the airplanes affected by AD 2011–17–07. We are issuing this AD to prevent failure of a rudder, aileron and/or elevator control cable.

(f) Compliance

Unless already done, comply with paragraphs (g) through (k) of this AD. If the hours time-in-service (TIS) of the control cables cannot be positively determined by the logbook, then you must use hours TIS of the airplane to comply with the requirements of this AD.

(g) Primary Flight Control Rudder Cable Inspection

Within the next 10 hours TIS after July 21, 2015 (the effective date of this AD) or within the next 60 days after July 21, 2015 (the effective date of this AD), whichever occurs first, and repetitively thereafter at or before reaching 200 hours TIS from the last inspection or replacement, do a detailed visual inspection of the left hand (LH) and right hand (RH) primary flight control rudder cables under the floor between FS 116.56 and FS 138.56, with specific focus on the cable and the pulley at FS126.06. Do the inspection as stated in paragraph 4. ACTION of M7 Aerospace SA226 Series Service Letter 226–SL–050, issued April 15, 2015, following the procedures specified in paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, section B., subparagraph (2) of M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011.

(h) Primary Flight Control Rudder Cable On-Condition Replacement

Before further flight after any inspection required in paragraph (g) of this AD, if any one of the conditions described in paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, section B., subparagraphs (3)(a) through (3)(d) of M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011, is found, replace the affected primary flight control rudder cable or cables with a new cable. Do the replacements following paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, sections C. through E., including all subparagraphs of M7 Aerospace Service Bulletin 226–27–072, issued June 27, 2011.

(i) Primary Flight Control Rudder Cable Mandatory Life Limit Replacement

Within the next 800 hours TIS after the last replacement or within the next 50 hours TIS after July 21, 2015 (the effective date of this AD), whichever occurs later, and repetitively thereafter every 800 hours TIS, replace the LH and RH primary flight control rudder cables with new cables. Do the replacements following paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, sections C. through E., including all subparagraphs of M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011.

(j) Primary Flight Control and Trim Tab Cable (Other Than Rudder Cables) Mandatory Life Limit Replacement

(1) *For cables with more than 6,000 hours TIS:* Inspect cables for deficiencies within 10 hours TIS after September 1, 2011, (the effective date retained from AD 2011–17–07).

(2) If any deficiencies are found during the inspection required in paragraph (j)(1) of this AD, before further flight replace the cable(s).

(3) Replace all other primary control and trim tab cables (pilot and co-pilot aileron cables, rudder/aileron interconnect cables, aileron trim tab cables, rudder trim tab cables, and elevator cables) within the initial compliance times as listed in paragraphs (j)(3)(i) through (j)(3)(iii) below and repetitively thereafter at intervals not to exceed 3,500 hours TIS. Do the replacements following paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, sections C. through E., including all subparagraphs of M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011.

(i) *For cables with less than or equal to 3,500 hours TIS:* replace cables when the control cables reach a total of 3,500 hours TIS or 150 hours TIS after September 1, 2011, (the effective date retained from AD 2011–17–07), whichever occurs later.

(ii) *For cables with less than or equal to 5,000 hours TIS but greater than 3,500 hours TIS:* replace cables within 150 hours TIS after September 1, 2011, (the effective date retained from AD 2011–17–07).

(iii) *For cables with more than 5,000 hours TIS:* replace cables within 50 hours TIS after September 1, 2011, (the effective date retained from AD 2011–17–07).

(k) Set Flight Control Cable Tension

Between 50 hours TIS and 200 hours TIS after installing any new control cable as required in paragraphs (g) through (j) of this AD, including all subparagraphs, check (set) flight control cable tension following paragraph 2. ACCOMPLISHMENT INSTRUCTIONS, sections C. through E. of M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011.

(l) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not 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 current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n) of this AD.

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

(3) AMOCs approved for AD 2011–17–07, Amendment 39–16771 (76 FR 50881, August 17, 2011) are not approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 21, 2015.

(i) M7 Aerospace SA226 Series Service Letter 226–SL–050, issued April 15, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on September 1, 2011 (76 FR 50881, August 17, 2011).

(i) M7 Aerospace SA226 Series Service Bulletin 226–27–072, issued June 27, 2011.

(ii) Reserved.

(5) For M7 Aerospace LLC service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.*

(6) You may view this service information at FAA, FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on June 25, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16171 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0376]

RIN 1625–AA08

Special Local Regulations; Annual Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual marine events in the Captain of the Port Detroit zone on the dates and times noted below. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after marine events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a portion of the Captain of the Port Detroit zone.

DATES: The regulations in 33 CFR 100.921, 33 CFR 100.927, and 33 CFR 100.928 will be enforced on the dates and times noted below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Jennifer M. Disco, Waterways Branch Chief, Marine Safety Unit Toledo, 420 Madison Ave., Suite 700, Toledo, OH 43604; telephone (419) 418–6023; email *Jennifer.M.Disco@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations listed in 33 CFR 100.921, 33 CFR 100.927, and 33 CFR 100.928, Special Local Regulations; Annual Events in the Captain of the Port Detroit Zone, at the following times for the following events:

(1) *Kelley's Island Swim, Lake Erie, Lakeside, OH.* The special local regulation listed in 33 CFR 100.921 will be enforced from 7 a.m. until 11 a.m. on July 15, 2015. This special local regulation will encompass all U.S. navigable waters of Lake Erie, Lakeside, OH, contained by a line connecting the following points: two points on land at the Lakeside dock, 41°32′51.96″ N./082°45′3.15″ W. and 41°32′52.21″ N./082°45′2.19″ W., and two points on Kelley's Island at the Kelley's Island Dock, 41°35′24.59″ N./082°42′16.61″ W., and 41°35′24.44″ N./082°42′16.04″ W. (NAD 83).

(2) *Dragon Boat Races, Maumee River; Toledo, OH.* The special local regulation listed in 33 CFR 100.927 will be enforced from 6 a.m. to 6 p.m. on June 20, 2015. This special local regulation will encompass all U.S. navigable waters of the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N.; 083°31′34.01″ W. straight across the river along the Cherry Street bridge to position 41°39′12.83″ N.; 083°31′42.58″ W. and a line extending from a point of land just south of International Park at position 41°38′46.62″ N.; 083°31′50.54″ W. straight across the river to the shore adjacent to position 41°38′47.37″ N.; 083°32′2.05″ W. (NAD 83).

(3) *Frogtown Race Regatta, Toledo, OH.* The special local regulation listed in 33 CFR 100.928 will be enforced from 5 a.m. to 7 p.m. on September 26, 2015. This special local regulation will encompass all navigable waters of the United States on the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

Under the provisions of 33 CFR 100.921, 33 CFR 100.927, and 33 CFR 100.928, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for event participants and safety craft. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event. The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

Dated: June 8, 2015.

Scott B. Lemasters,

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

[FR Doc. 2015–16530 Filed 7–2–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0328]

RIN 1625–AA08

Special Local Regulations For Marine Events, Manasquan River; Seaside Park, New Jersey

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of the special local regulation for the recurring New Jersey Offshore Grand Prix, held in the waters of the Manasquan River and Atlantic Ocean, near Seaside Park, New Jersey. The change of enforcement date for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of the Manasquan River and Atlantic Ocean near Seaside Park, New Jersey, from 10:00 a.m. to 5:00 p.m. on July 9, 2015, and July 10, 2015.

DATES: This rule is effective from July 9 to July 30, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–

2015–0328]. 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 temporary rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271–4851, email *Brennan.P.Dougherty@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
COTP Captain of the Port

A. Regulatory History and Information

The regulation for this recurring marine event may be found at 33 CFR 100.501, Table to § 100.501, section (a), line ''7''. This year, the date is different than published in the Table, so this temporary final rule has been issued.

The Coast Guard is issuing this final rule after publication of NPRM USCG–2015–0328 (80 FR 35281) which received no comments.

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** because information about the new date was not received by the Coast Guard with sufficient time to make the Final Rule effective 30 days after publication in the **Federal Register** while also allowing for an opportunity to comment on the proposed rule.

B. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations.

The purpose of this special local regulation is to provide for the safety of participants, spectator craft, and other vessels transiting the event area while the Grand Prix is occurring.

C. Discussion of the Final Rule

The Coast Guard has previously published a list of annual marine events within the Fifth Coast Guard District and special local regulation locations at 33 CFR 100.501. The Table to § 100.501 identifies special local regulations by COTP zone, with the COTP Delaware Bay zone listed in section ''(a.)'' of the Table. The Table to § 100.501, at section (a.) event Number ''7'', describes the enforcement date and regulated location for this marine event.

The date listed in the Table has the marine event on the third Wednesday and Thursday of July. However, this temporary rule changes the marine event date to July 9, 2015 and July 10, 2015, to reflect the actual date of the event for this year.

The Coast Guard will temporarily suspend the regulation listed in Table to § 100.501, section (a) event Number ''7'', and insert this temporary regulation at Table to § 100.501, at section (a.) as event Number ''15'', in order to reflect that the special local regulation will be effective and enforced from 10:00 a.m. until 5:00 p.m. on July 9, 2015 and July 10, 2015. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

The regulated area of this special local regulation includes all the waters of the Manasquan River from the New York and Long Branch Railroad Bridge to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N.; southward to Seaside Park, New Jersey latitude 39°55′00″ N., from the New Jersey shoreline seaward to the limits of the Territorial Sea as defined in 33 CFR 2.22.

A fleet of spectator vessels is anticipated to gather nearby to view the marine event. Due to the need for vessel control during the marine event vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

The Coast Guard may assign an event patrol, as described in 33 CFR 100.40, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The event patrol and Patrol Commander may be contacted on VHF–FM Channel 16. During the event, the Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property. Coast Guard Sector Delaware Bay will notify the public by broadcast notice to mariners at least one hour prior to the times of enforcement.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Special Local Regulation to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the Special Local Regulation with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of the boat race.

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 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 rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along a portion of Manasquan River and Inlet, as well as the New Jersey shore from Ashbury Park and Seaside Park, New Jersey to the Territorial seas, on July 9, 2015 and July 10, 2015 from 10:00 a.m. to 5:00 p.m., unless cancelled earlier by the Captain of the Port.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will 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 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 implementation of regulations within 33 CFR part 100, applicable to Special Local Regulations on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting the Manasquan River in the vicinity of Asbury Park, NJ, in order to protect the safety of life and property on the waters for the duration of the boat race. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In the Table to § 100.501, suspend line No. (a.)7; and

■ 3. Add line No. (a.)15 to the Table to § 100.501 to read as follows:

* * * * *

No.	Date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
15	July 9th10th	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad Bridge to Manasquan Inlet, together- with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″ N; southward to Seaside Park, New Jersey latitude 39°55′00″ N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.

* * * * *

Dated: June 30, 2015.

B.A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2015–16504 Filed 7–2–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0457]

RIN 1625–AA08

Special Local Regulation; L'HERMIONE Parade, Upper New York Bay and Lower Hudson River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a Special Local Regulation on the navigable waters of the Upper New York Bay and Lower Hudson River, NY for the tall ship L'HERMIONE boat parade. This Special Local Regulation allows the Coast Guard to enforce restrictions on all vessel traffic through the Special Local Regulation during the L'HERMIONE boat parade, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the parade of ships. The Coast Guard is issuing this temporary rule due to the exigent circumstances and invites comments to modify or amend the rule, as necessary.

DATES: This rule is effective and will be enforced from 6 a.m. to 3 p.m. on July 4, 2015.

Comments and related material may be received by the Coast Guard throughout the effective period.

Requests for public meetings must be received by the Coast Guard on or before July 27, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2015–0457. 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.

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 Lieutenant Douglas Neumann, Waterways Management Division at Coast Guard Sector New York, telephone 718–354–4154 or email *DOUGLASW.NEUMANN@USCG.MIL.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
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 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this proposed 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–2015–0457) 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 currently do not plan to hold a public meeting. You may, however, 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 in 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

The Coast Guard is issuing this temporary interim rule without prior notice through an NPRM 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 an NPRM with respect to this rule because the event sponsors were late in submitting the marine event application. The Coast Guard will, however, consider comments in issuing a subsequent temporary interim rule or temporary final rule.

This late submission did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the parade, since the final submission was received on May 13, 2015. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns.

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

C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1231, 1233; 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, the Coast Guard has the authority to establish Special Local Regulations in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

This rule is prompted by the navigation safety situation created by highly concentrated boat parade through a highly-trafficked harbor.

The purpose of this rulemaking is to provide for safety on the navigable waters in the regulated area during the parade.

D. Discussion of the Interim Rule

The Coast Guard is establishing a Special Local Regulation on the navigable waters of the Upper New York Bay and Lower Hudson River. This Special Local Regulation allows the Coast Guard to enforce restrictions on all vessel traffic through the parade route during the L'HERMIONE Parade, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. All vessels participating in the parade must proceed at five knots and display a flag that is blue in color. Parade vessels are required to be power driven. Sailing vessels may hoist sails, but are required to be power driven. All vessels must have the ability to communicate of VHF Frequency channel 8. Parade vessels must keep a distance of 50 yards from the L'HERMIONE at all times, unless authorized by the COTP or a designated representative. All vessels not participating in the parade but viewing the parade must keep a distance of 250 yards from the parade participants and not interfere with marine traffic. Human-powered vessels, such as kayaks and canoes, will not be considered participants in the parade, nor will they be allowed to enter the formation of the parade.

E. 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 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.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be restricted for limited durations and the Special Local Regulation covers only a small portion of the navigable waterway. Advanced public notifications will also be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter or transit within the parade route during a vessel restriction period.

The Special Local Regulation would not have a significant economic impact on a substantial number of small entities for the following reasons: the Special Local Regulation would be of limited size and any waterway closure of short duration. Additionally before the effective period of a waterway closure, advanced public notifications will be

made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

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 (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 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 rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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 restricting vessel movement within an area. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Safety of life in the regatta or marine parade area.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T01–0457 to read as follows:

§ 100.35T01–0457 Special Local Regulation; L'HERMIONE Parade, Upper New York Bay and Lower Hudson River, New York, NY

(a) *Location.* The following area is a Special Local Regulation: All navigable waters, from the Verrazano Bridge North to the East side of the Statue of Liberty and north to Pier 92 on the Hudson River.

(b) *Regulations.* (1) The provisions of the general regulations for regulated navigation areas contained in 33 CFR 165.11 and 165.13 apply to the parade route specified in this Special Local Regulation.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the COTP Sector New York or a designated representative.

(3) Persons and vessels may request permission to enter the parade route by contacting the COTP or one of the COTP's on-scene representatives on VHF–16 or via phone at 718–354–4353.

(4) During periods of enforcement, all vessels participating in the parade must proceed at five knots or at such speed dictated by the event organizers. Vessels participating in the parade must display a flag that is blue in color and are required to be power driven. Sailing vessels may hoist sails, but are required to be power driven and must maneuver as power driven vessels. All vessels must have the ability to communicate on VHF Frequency channel 8. Vessels must keep a distance of 50 yards from the L'HERMIONE at all times unless authorized by the COTP or a designated representative. All vessels not participating in the parade but viewing the parade must keep a distance of 250 yards from the parade participants and not interfere with marine traffic. Human power vessels, such as kayaks and canoes will not be considered participants in the parade, nor will they be allowed to enter the formation of the parade.

(5) Vessels must comply with all directions given to them by the COTP or one of the COTP's on-scene representatives. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. An on-scene representative may be on a Coast Guard vessel, private vessel, or may be on shore and communicating with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR 84—Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement period.* This regulation is enforceable from 6 a.m. on July 4, 2015 until 3 p.m. on July 4, 2015.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include constructive notice by publication in the **Federal Register**, actual notice, as well as Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this Special Local Regulation may be reported to the COTP at 718–354–4353 or on VHF-Channel 16.

Dated: June 8, 2015.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2015–16506 Filed 7–2–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0075; FRL–9929–73–Region 5]

Approval of Air Quality Implementation Plans; Sheboygan County, Wisconsin 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) for Sheboygan County, Wisconsin. Wisconsin submitted an Early Progress Plan for Sheboygan County on January 16, 2015. This submittal was developed to establish MVEBs for the Sheboygan 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Sheboygan 8-hour ozone area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the 2011 base year through a 2015 target year.

DATES: This direct final rule will be effective September 4, 2015, unless EPA receives adverse comments by August 5, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0075, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2015–0075. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What are the criteria for Early Progress Plans?
III. What is EPA's analysis of the request?
IV. What are the MVEBs for the Sheboygan County 8-hour ozone area?
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What is the background for this action?

EPA's final rule designating nonattainment areas and associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the **Federal Register** on May 21, 2012 (77 FR 30088). Sheboygan County was designated as marginal nonattainment. The Sheboygan County 8-hour ozone area had been previously designated nonattainment for the 1-hour ozone standard and had 1-hour MVEBs for NO_X and VOC established in the Wisconsin 1-hour maintenance plan SIP. The 1-hour MVEBs are the only approved MVEBs for Sheboygan County and were based on EPA's MOBILE6.2 emissions model. Consequently, the transportation partners in the Sheboygan area have to use the 1-hour MVEB test to demonstrate transportation conformity for the 8-hour ozone standard until new MVEBs are approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Wisconsin submitted this plan to establish new MVEBs developed with EPA's current MOVES2014 model.

II. What are the criteria for Early Progress Plans?

EPA allows for the establishment of MVEBs for the 8-hour ozone standard prior to a state submitting its first required 8-hour ozone SIP that would include new MVEBs. Although voluntary, these ''early'' MVEBs must be established through a plan that meets all the requirements of a SIP submittal. This plan is known as the ''Early Progress Plan.'' Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (*see,* 69 FR 40019) reads as follows:

''The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.,* rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas 'are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas.''

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, shows some progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (*i.e.,* 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the Sheboygan 8-hour ozone area.

III. What is EPA's analysis of the request?

On January 16, 2015, the State submitted to EPA an Early Progress Plan for the sole purpose of establishing MVEBs for the Sheboygan 8-hour ozone area. The submittal utilizes a base year of 2011, and a projected year 2015 to establish NO_X and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Sheboygan interagency consultation group, which consists of the transportation and air quality partners in the Sheboygan 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2011 base year and 2015 forecast year. The NO_X and VOC emissions in tons per day (tpd) within the Sheboygan nonattainment area are expected to decrease significantly, 28.6 percent and 8.7 percent, respectively, between 2011 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

TABLE 1—SHEBOYGAN COUNTY NO_X EMISSIONS

Source	2011 NO_X (tpd)	2015 NO_X (tpd)
Point	10.22	6.15
Area	1.32	1.33
On-road Mobile	5.41	4.44
Non-Road Mobile	3.61	2.76
Total	20.56	14.68
Total Percent Reduction	28.6%	

TABLE 2—SHEBOYGAN COUNTY VOC EMISSIONS

VOC Source	2011 VOC (tpd)	2015 VOC (tpd)
Point	2.63	2.63
Area	6.43	6.34
On-road Mobile	2.44	1.97
Non-Road Mobile	3.03	2.76
Total	14.53	13.27
Total Percent Reduction	8.7%	

EPA found these MVEBs adequate for transportation conformity purposes in an earlier action (80 FR 17428). As of April 16, 2015, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Sheboygan County must meet the budget test using these 8-hour MVEBs, instead of the 1-hour ozone MVEBs. Please note that this adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

IV. What are the MVEBs for the Sheboygan 8-hour ozone area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for NO_X and VOC for the Sheboygan 8-hour ozone area. EPA has determined that the MVEBs contained in the Early Progress Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO_X for the Sheboygan County, Wisconsin area are as follows:

Area	2015 NO_X (tpd)	2015 VOCs (tpd)
Sheboygan County	4.435	1.972

V. What action is EPA taking?

EPA is approving Sheboygan's Early Progress Plan, including the 2015 MVEBs for NO_X and VOC. The Early Progress Plan demonstrates progress towards attainment of the 2008 ozone NAAQS for the Sheboygan nonattainment area. The NO_X and VOC emissions reductions from 2011 to 2015 for Sheboygan County nonattainment areas were 28.6 percent and 8.7 percent, respectively. These emission reductions were based on control measures that are permanent and enforceable and will continue to improve air quality in the region, thus demonstrating that the MVEBs are showing progress toward attainment.

EPA issues this direct final rulemaking in response to Wisconsin's January 16, 2015 submittal of an Early Progress Plan. This revision is a voluntary SIP revision for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Sheboygan 8-hour ozone area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective September 4, 2015 without further notice unless we receive relevant adverse written comments by August 5, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 4, 2015.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: June 19, 2015.

Susan Hedman,

Regional Administrator, Region 5.

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.*

■ 2. Section 52.2585 is amended by adding paragraph (cc) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(cc) Approval—On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Sheboygan County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the year 2015. The MVEBs for Sheboygan County are now: 1.972 tons per day of VOC emissions and 4.435 tons per day of NO_X emissions for the year 2015.

[FR Doc. 2015–16396 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0225; FRL–9930–08–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Minor New Source Review Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a January 24, 2013 State Implementation Plan (SIP) revision submitted for the State of Maryland by the Maryland Department of the Environment (MDE). This revision pertains to preconstruction permitting requirements under Maryland's minor New Source Review (NSR) program. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on August 5, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0225. 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 submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 2015 (80 FR 23756), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of revisions to MDE's minor NSR program. The formal SIP revision (#12–10) was submitted by MDE on behalf of the State of Maryland on January 24, 2013.

The revision consists of amendments to Regulation .09 under section 26.11.02 of the Code of Maryland Regulations (COMAR). An amendment to COMAR 26.11.01.01 inadvertently widened the universe of sources that are required to obtain a permit to construct under COMAR 26.11.02.09. The previously approved version of COMAR 26.11.02.09A(4) requires that any ''National Emission Standards for Hazardous Air Pollutants Source (NESHAP Source) as defined in section 26.11.01.01 . . .'' obtain a permit to construct. The definition of NESHAP Source at COMAR 26.11.01.01B(21) was amended and simplified (specifically, 26.11.01.01B(21)(b)), effective March 5, 2012.[1] The revised definition had the unintended consequence of requiring that all sources subject to the NESHAP obtain a permit to construct, even the small emission sources which had previously been exempt under section 26.11.02.10. The proposed revision to section 26.11.02.09A(4) allows MDE to retain the exemptions for smaller sources as originally intended and already approved in the Maryland SIP. Additionally, Regulations .09A(3) and .09A(4) under section 26.11.02 were revised to clarify that electric generating stations that meet the definitions of New Source Performance Standard (NSPS) sources and NESHAP sources are exempt from MDE permitting requirements only if they receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC).

II. Summary of SIP Revision

COMAR 26.11.02.09A(4) has been revised to specify that NESHAP sources ''. . . as defined by COMAR 26.11.01.01B(21)(a),'' are required to obtain a permit to construct. This corrects the unintended consequence of applying MDE permitting requirements to emission sources that would otherwise be exempt. COMAR 26.11.02.09A(6) will continue to require that all sources not explicitly exempt are required to obtain a permit to construct. Additionally, as previously discussed, Regulations .09A(3) and .09A(4) under section 26.11.02 have been revised to clarify that electric generating stations that meet the definitions of NSPS sources and NESHAP sources are exempt from permitting requirements only if they receive a CPCN from the Maryland PSC.

[1] It should be noted that COMAR 26.11.01.01B(21) is not part of the Maryland SIP.

The revisions were effective in Maryland on July 8, 2013.

As was noted in the NPR, limited approval was previously granted to a Maryland SIP revision that included amendments to COMAR 26.11.02.09. *See* 77 FR 6963 (February 10, 2012). The reasons for that limited approval are unrelated to this action, and do not prevent EPA from granting full approval to amendments to section 26.11.02.09 contained in the January 24, 2013 submittal. That limited approval remains in effect.

Other specific requirements of MDE's January 24, 2013 submittal and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving MDE's January 24, 2013 submittal as a revision to the Maryland SIP. This action is being taken in accordance with CAA section 110.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MDE rules regarding definitions and permitting requirements discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. 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 (Public Law 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 September 4, 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 Maryland's minor NSR program 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.02.09. The revised text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ Citation at 40 CFR 52.1100
*	*	*	*	*
26.11.02	**Permits, Approvals, and Registration**			
*	*	*	*	*
26.11.02.09	Sources Subject to Permits to Construct.	7/8/13	7/6/15 [*Insert* ***Federal Register*** *citation*].	.09A(3) and .09A(4) are amended. Limited approval remains in effect.
*	*	*	*	*

* * * * *

[FR Doc. 2015–16386 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 80, No. 128
Monday, July 6, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2466; Directorate Identifier 2015–CE–018–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Piaggio Aero Industries S.p.A Model P–180 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the need to restore the safe fatigue life of the bulkhead structure. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 20, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A, Airworthiness Office, Viale Generale Disegna, 1–17038 Villanova d'Albenga, Savona, Italy; telephone: +39 010 6481800; fax: +39 010 6481374; email: *technicalsupport@piaggioaerospace.it;* Internet: *www.piaggioaerospace.it/en/customer-support#care.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2015–2466; 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 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

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–2015–2466; Directorate Identifier 2015–CE–018–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 because of those comments.

We will post all comments we receive, without change, to *http://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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2015–0071, dated: April 30, 2015 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In 1997, Piaggio Aero Industries S.p.A (PAI) developed a modification of the forward pressurized bulkhead, published through PAI Service Bulletin (SB) 80–0081, aiming to restore the safe fatigue life of the bulkhead structure.

Consequently, ENAC Italy (formerly RAI) issued Prescrizione di Aeronavigabilita (PA) 97–148 to require compliance with this SB.

After RAI PA 97–148 was issued, PAI issued SB 80–0081 Revision 2 to provide improved instructions for specific serial numbers. Prompted by this development, EASA issued AD 2010–0146 superseding PA 97–148 and requiring accomplishment of instruction of PAI issued SB 80–0081 Revision 2.

After that AD was issued, PAI issued SB 80–0081 Revision 3 to make the instructions for inspection (and, depending on findings, rework/reinforcement) applicable to all aeroplanes.

For the reasons described above, this AD retains the requirements of EASA AD 2010–0146, which is superseded, requires inspection and, depending on findings, reinforcement of the pressurized bulkhead structure on extended population of aeroplanes. This AD also specifies that certain aeroplanes modified in accordance with SB 80–0081 up to Revision 2 need to be inspected and, depending on findings, reinforced as required by this AD.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2466.

Related Service Information Under 1 CFR Part 51

Piaggio Aero Industries S.p.A has issued Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 3, dated: January 20, 2015. The service information describes procedures for inspection and, depending on findings, rework/reinforcement of the bulkhead. 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 the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the 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 will affect 28 products of U.S. registry. 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 the proposed AD on U.S. operators to be $2,380, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 88 work-hours and require parts costing $30,000, for a cost of $37,480 per product. We have no way of determining the number of products that may need these actions.

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 AD:

Piaggio Aero Industries S.p.A: Docket No. FAA–2015–2466; Directorate Identifier 2015–CE–018–AD.

(a) Comments Due Date

We must receive comments by August 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aero Industries S.p.A P–180 Model P–180 airplanes, serial numbers (S/N) 1004 through 1033, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the need to restore the safe fatigue life of the bulkhead structure. We are issuing this AD to correct the safe fatigue life of the airplane.

(f) Actions and Compliance

(1) Unless already done, do the actions in paragraphs (f)(2) through (f)(4) of this AD at whichever of the following compliance times occurs later:

(i) Within 1,500 hours time-in-service (TIS) after the effective date of this AD, but not to exceed 6,000 hours total hours TIS on the airplane; or

(ii) Within 200 hours TIS after the effective date of this AD or 6 months after the effective date of this AD, whichever occurs first.

(2) Inspect (visually or using a standard endoscope) the forward pressurized bulkhead to verify presence of bulkhead reinforcement following Part A1 of the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 3, dated: January 20, 2015.

(i) If the inspection results indicate that the reinforcements are properly installed, ascertain (visually or by means of standard endoscope equipment) that there are no cracks or defects. If cracks or defects are identified, before further flight, repair using instructions from Piaggio Aero Industries as identified in Service Letter 80–0097.

(ii) If the inspection results indicate that the reinforcements are not installed, reinforce the forward pressurized bulkhead following Part A2 of the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 3, dated: January 20, 2015.

(3) Modify the forward pressurized bulkhead following Part C of the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 3, dated: January 20, 2015.

(4) This AD allows credit for the actions required in paragraphs (f)(2)(ii) and (f)(3) of this AD if done before the effective date of this AD following the instructions of Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Original Issue, dated: April 28, 1997; Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 1, dated: May 11, 2010; or Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 2, dated: July 19, 2010.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane

to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0071, dated April 30, 2015; Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Original Issue, dated: April 28, 1997; Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 1, dated: May 11, 2010; or Piaggio Aero Industries S.p.A. Service Bulletin 80–0081, Revision No. 2, dated: July 19, 2010, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2466. For service information related to this AD, contact Piaggio Aero Industries S.p.A, Airworthiness Office, Viale Generale Disegna, 1–17038 Villanova d'Albenga, Savona, Italy; telephone: +39 010 6481800; fax: +39 010 6481374; email: *technicalsupport@piaggioaerospace.it;* Internet: *www.piaggioaerospace.it/en/customer-support#care.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 25, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16293 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2456; Directorate Identifier 2015–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This proposed AD was prompted by reports of cracking at a central part of the structure. This proposed AD would require repetitive inspections of the skin hidden by the upper and lower splice fittings on both sides of the fuselage, and corrective action if necessary. We are proposing this AD to detect and correct fatigue cracking of the hidden fuselage skin and cracking, corrosion, and other damage to the splice fittings and adjacent visible fuselage skin and structure that could lead to loss of a primary load path between the fuselage and the wing box, and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 20, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206 766 5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2456.

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–2015–2456; 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 Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–2456; Directorate Identifier 2015–NM–032–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 because of those comments.

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

Discussion

While replacing a cracked underwing longeron fitting, a crack indication was found in the STA 786 ring chord at the tension bolt hole common to the wing front spar lower chord and the internal bathtub fittings. There were two similar reports of these findings from two separate operators. The airplanes in these reports had 14,367 and 18,354 flight cycles and 90,389 and 96,826 flight hours, respectively. The current inspections in the Model 767 Maintenance Planning Document are not sufficient to detect any possible fuselage skin crack in the area adjacent to the ring chord at STA 786 before the crack extends to a critical length. The fuselage skin in this area is hidden between the splice fittings on the external side of the fuselage and the bathtub fittings on the internal side. This condition, if not corrected, could result in loss of a primary load path between the fuselage and the wing box, and consequent reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0263, dated January

12, 2015. The service information describes procedures for repetitive inspections of the skin and splice fittings at stringer 29, body station 786 ring chord. 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

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' Refer to this service information for details on the procedures and compliance times.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 767–53A0263, dated January 12, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 430 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	9 work-hours × $85 per hour = $765 per inspection cycle.	$0	$765 per inspection cycle	$328,950 per inspection cycle.

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

Explanation of ''RC (Required for Compliance)'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an AMOC is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

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):

The Boeing Company: Docket No. FAA–2015–2456; Directorate Identifier 2015–NM–032–AD.

(a) Comments Due Date

We must receive comments by August 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking at the station (STA 786) ring chord at the tension bolt hole common to the wing front spar lower chord and the internal bathtub fittings. We are issuing this AD to detect and correct fatigue cracking of the hidden fuselage skin and cracking, corrosion, and other damage to the splice fittings and adjacent visible fuselage skin and structure that could lead to loss of a primary load path between the fuselage and the wing box, and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0263, dated January 12, 2015, except as required by paragraph (h) of this AD, do external ultrasonic and detailed inspections to detect cracking, corrosion, or other damage at the splice fitting location, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0263, dated January 12, 2015.

(1) If cracking, corrosion, or other damage is not found, repeat the inspections at intervals not to exceed 6,000 flight cycles or 18,000 flight hours, whichever occurs first. Accomplishing a repair as specified in paragraph (g)(2) of this AD terminates the repetitive inspections in the repaired area only.

(2) If any cracking, corrosion, or other damage is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD. The repetitive inspections of paragraph (g)(1) are terminated in the repaired area only.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Service Bulletin 767–53A0263, dated January 12, 2015, specifies a compliance time ''after the original issue date of this Service Bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

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

Issued in Renton, Washington, on June 24, 2015.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–16296 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 313

RIN 3084–AB42

Amendment to the Privacy of Consumer Financial Information Rule Under the Gramm-Leach-Bliley Act

Correction

In proposed rule document 2015–14328 beginning on page 36267 in the issue of Wednesday, June 24, 2015, make the following correction:

On page 36268, in the first column, in the second full paragraph, in the second line, ''August 17, 2015'' should read ''August 31, 2015''.

[FR Doc. C1 2015–14328 Filed 7–2–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5742–P–01]

RIN 2502–AJ23

Federal Housing Administration (FHA): Single Family Mortgage Insurance Maximum Time Period for Filing Insurance Claims, Curtailment of Interest and Disallowance of Operating Expenses Incurred Beyond Certain Established Timeframes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the maximum time period within which an FHA-approved mortgagee must file a claim with FHA for insurance benefits. HUD's current regulations are silent with respect to a deadline by which a claim for insurance benefits must be filed with FHA. Due to the downturn in the housing market, which resulted in a significant increase in mortgage defaults, some mortgagees have refrained from promptly filing claims for insurance benefits and instead have opted to wait and file multiple claims with FHA at a single point in time. The uncertainty regarding a deadline by which a claim must be

filed, and the number of claims currently being filed at a single point in time strain FHA resources and negatively impact FHA's ability to project the future state of the Mutual Mortgage Insurance Fund (MMIF), and, consequently, the ability of FHA to fulfill its statutory obligation to safeguard the MMIF. To address this concern, HUD proposes to establish a deadline by which a mortgagee must file a claim for insurance benefits. This rule also proposes to revise HUD's policies concerning the curtailment of interest and the disallowance of certain expenses incurred by a mortgagee as a result of the mortgagee's failure to timely initiate foreclosure or timely take such other action that is a prerequisite to submission of a claim for insurance.

DATES: *Comment Due Date:* September 4, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the proposed rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations for FHA single family mortgage insurance are codified in 24 CFR part 203. These regulations address mortgagee eligibility requirements and underwriting procedures, contract rights and obligations, and the mortgagee's servicing obligations. These regulations also address action to be taken by a mortgagee when a mortgagor defaults on a loan, such as undertaking loss mitigation as provided in § 203.501. However, if it is determined that the default is not curable, the mortgagor does not remain in the home, or both, the mortgagee is eligible to file a claim for insurance benefits. (See §§ 203.330 through 203.417.) While the current regulations and related guidance [1] and applicable claim form [2] provide detailed directions about filing a claim for insurance benefits and address various conditions that may be applicable to the filing of a claim (for example, requirements applicable to the title to the property or the condition of the property), the regulations do not establish a deadline by which a mortgagee *must* file a claim for insurance benefits with FHA except for loans covered under § 203.474. Under the current regulations, as long as the mortgagee complies with all applicable requirements related to a claim for insurance, the mortgagee may file its claim at any time. With respect to payment of the claim, generally FHA pays a claim based on an automated process that includes edit checks and performs post payment reviews.

Mortgagees generally file claims for FHA mortgage insurance within 2 months after the date of the foreclosure sale. In recent years, however, some mortgagees altered this practice and opted to wait and file multiple claims with FHA at a single point in time. In some instances, mortgagees delayed filing claims for 2 years or more after foreclosure sales. The uncertainty regarding the timing of the filing of claims and the high number of claims filed all at once strain FHA resources. This activity has the potential to negatively impact HUD's ability to project the future state of the MMIF, and, consequently, FHA's ability to fulfill the statutory obligation to safeguard the MMIF. A delay in filing a claim also increases interest, property charges and other expenses included in the insurance benefit claim and can result in additional decline in the value of a property that had been the security for the FHA-insured mortgage foreclosed by the mortgagee, thereby reducing the amount FHA could recover on a real estate owned (REO) sales transaction. The proposed rule is designed to address these concerns.

II. This Proposed Rule

Through this rule, HUD proposes to amend FHA's regulations in subpart B of 24 CFR part 203, which govern the contract rights and obligations pertaining to FHA single family mortgage insurance. The proposed rule would add a new § 203.317a which would terminate the contract of insurance if the mortgagee fails to file a claim within the maximum time periods established in this rule. It would also amend § 203.318 to provide that written notice of termination required by this section is not required for termination under new § 203.317a. The proposed rule would add a new § 203.372 that would establish a deadline by which an FHA-approved mortgagee (or its approved servicer) must file a claim for insurance benefits. In addition, the proposed rule would amend § 203.402 to establish a deadline to be eligible for reimbursement of certain expenses

[1] See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4330.4* and *https://entp.hud.gov/pdf/mp_sfs3_cp_clminpt.pdf.*

[2] *http://www.hud.gov/offices/adm/hudclips/forms/files/27011.pdf.*

related to the filing of a claim for insurance benefits and to refine the process by which FHA would curtail interest and decline to reimburse certain expenses under this section. The proposed rule would also amend the heading of § 203.474. These changes would only apply prospectively and would take effect for mortgages endorsed for insurance on or after the effective date of the final rule.

Termination of Contract of Insurance for Mortgagee's Failure To File a Claim

New § 203.317a of this proposed rule would cause the contract of insurance to terminate if the mortgagee fails to file a claim within the maximum allowable time periods for filing the claim, and the proposed amendment to § 203.318 would exempt this type of termination from the written notice requirements.

Deadline by Which Mortgagee Must File a Claim for Insurance Benefits

In general, proposed § 203.372 will prohibit the filing of a claim for insurance benefits after the passage of a specified amount of time following certain events relating to the submission of a claim. Additionally, it will prohibit the filing of any claim more than 12 months after expiration of a period of time from the date of default that is equal to the amount of time provided in the reasonable diligence timeframe established under § 203.356(b). For purposes of this proposed rule, the date of default is the date defined in 24 CFR 203.331, or 203.467 for rehabilitation loans.

For a property acquired by the mortgagee through foreclosure, new § 203.372 would require the mortgagee to file a claim for insurance benefits no later than 3 months from the occurrence of one of the following events, whichever is the last to occur: (1) The date of the foreclosure sale; (2) the date of expiration of the redemption period (the period allowed the mortgagor to redeem and regain ownership of the property); (3) the date the mortgagee acquires possession of the property (*i.e.,* the property is vacant); or (4) such further time as the Secretary or Secretary's designee may approve in writing, but in no case may a claim be filed more than 12 months after expiration of a period of time from the date of default that is equal to the amount of time provided in the reasonable diligence time period established pursuant to § 203.356(b), unless an extension is granted pursuant to § 203.496. If a claim is not timely filed, the mortgagee retains ownership of the property and forfeits its right to file a claim for insurance benefits.

For a property sold through a pre-foreclosure sale (PFS), or Claim Without Conveyance of Title (CWCOT), new § 203.372 would require the mortgagee to file a claim for insurance benefits no later than 3 months following the date of the closing, for PFS, and no more than 12 months after expiration of a period of time from the date of default that is equal to the amount of time provided in the reasonable diligence time period for foreclosure, for CWCOT. If a claim is not timely filed, the mortgagee forfeits its right to file a claim for insurance benefits.

For a property acquired by the mortgagee through a deed-in-lieu of foreclosure, new § 203.372 would require the mortgagee to file a claim for insurance benefits no later than 3 months following the date of conveyance of the property to the mortgagee or the date of conveyance of the property to HUD, the date of execution of the deed by the mortgagor, or no more than 12 months after the expiration of a period of time from the date of default that is equal to the reasonable diligence time period for foreclosure, whichever occurs first.

The proposed deadline for filing mortgage insurance claims will bring greater certainty to the claims process, thereby facilitating HUD's ability to comply with its statutory obligation to protect the FHA insurance funds. HUD believes that these time periods in which to submit a claim for insurance, as proposed in new § 203.372, provide mortgagees with sufficient time to take all action necessary to file a claim for insurance benefits. The proposed deadlines would not deny mortgagees the administrative benefits of submitting multiple claims at one time, as long as the individual claims being filed fall within the relevant time periods proposed by this rule. Additionally, the filing of a claim will not toll the deadlines proposed in this rule or guarantee an extension of time in which to file or refile a claim that was withdrawn or denied for any reason.

Disallowance of Expenses and Requirement To Curtail Interest Due to Failure To Meet Established Timelines

In addition to establishing a deadline by which a mortgagee must file a claim for insurance benefits, this rule proposes to amend § 203.402 to disallow expenses incurred by a mortgagee prior to the filing of a claim for insurance benefits where such expenses result from a mortgagee's failure to timely initiate foreclosure action or timely take such other action that is a prerequisite to submission of a claim for insurance as established in the part 203, subpart B, regulations.

The amended § 203.402 emphasizes the need to meet the timelines established in the part 203, subpart B, regulations that pertain to claim procedures and payment of insurance benefits, and where such deadlines are not met, FHA will not reimburse related costs. This proposed rule would refine the time periods in which such expenses are disallowed to provide only for the curtailment of interest and reduction in expenses incurred as a result of the mortgagee's delay. Specifically, in proposed §§ 203.402(k)(1)(ii), 203.402(k)(2)(iii), and 203.402(k)(3)(iii), the interest would be reduced only by the amount determined to have been incurred as a result of the failure of the mortgagee to comply with the specified time periods, rather than for the remaining duration of the life of the mortgage and related FHA insurance contract. The amended § 203.402 would also provide that if the claim is filed after any of the timeframes set forth in new paragraph (u) of this section, then the mortgagee must curtail expenses as provided in that paragraph. The dates that would trigger curtailment of expenses due to failure to meet a deadline on a claim that is filed timely include the following: (1) The timeframe for taking First Legal Action to commence foreclosure; (2) the reasonable diligence timeframe for the state in which the property is located; (3) the timeframe to convey a property after obtaining title and possession; (4) the timeframe for marketing a property; or (5) any other timeframe established under this subpart that is applicable to the claim for insurance benefits. If the amount of incurred expenses is unavailable, then the mortgagee must estimate the expenses incurred (as a prorated amount) as a result of not complying with the deadlines specified for the events numbered (1) through (5). However, nothing in this section limits FHA's right to review a claim for any reason related to protection of the MMIF.

Examples of Claim Curtailment Proration

Example 1

- The mortgagee completes First Legal Action on calendar day 230 instead of the First Legal Action deadline, which is day 180 (*i.e.,* 6 months). The allowable and reasonable costs including interest, attorney fees, taxes, insurance, homeowner association (HOA)/condominium association (COA) fees, maintenance, etc., incurred during the First Legal

Action completion period total $2,750. An extension was either not requested by the mortgagee or was requested and not approved by HUD. Therefore, the mortgagee must curtail $597.82 = {[(230 − 180)/230]*$2,750} of the First Legal Action costs.

• The reasonable due diligence timeframe (which includes 30 days to file a claim) is 15 months from the completion of First Legal Action in this hypothetical example.[3] The mortgagee conveys the property in conveyance condition in 13 months. The total allowable and reasonable costs incurred for the above-referenced timeframe for taxes, insurance, and maintenance is $15,085. Consequently, the mortgagee is not required to curtail any additional cost.

• *Final Outcome:* The mortgagee is required to curtail total claim expenses of $597.82 = ($597.82+$0).

Example 2

• A mortgagee receives a 30 day extension to evaluate a mortgagor for loss mitigation because the mortgagor's expenses have decreased since the previous evaluation for loss mitigation. However, the mortgagor does not qualify for loss mitigation. The mortgagee completes First Legal Action on calendar day 252 instead of the First Legal Action deadline, which is day 210 (*i.e.,* 6 months + 30 day extension). The allowable and reasonable costs including interest, attorney fees, taxes, insurance, maintenance, HOA/COA fees, etc., incurred during the First Legal Action completion period total $10,061. Therefore, the mortgagee must curtail $1,676.83 = {[(252 − 210)/252]*$10,061} of the First Legal Action costs.

• The reasonable due diligence timeframe, which includes 30 days to file a claim, is 10 months (300 calendar days) from completing First Legal Action in this hypothetical example.[4] The mortgagee conveys the property in conveyance condition in 540 calendar days. The total allowable and reasonable costs incurred for the referenced timeframe for taxes, insurance, and maintenance is $30,200. Therefore, the mortgagee must curtail an additional $13,422.22 of claim cost = {[(540 − 300)/540]*$30,200}.

• *Final Outcome:* The mortgagee is required to curtail total claim expenses of $15,099.05 = ($1,676.83+$13,422.22).

Existing § 203.365, which pertains to documents and information to be furnished to the Secretary under a claim review, lists items to be furnished to the Secretary within 45 days after a deed is filed for record in the case of a conveyance claim or within 30 days after the closing of the pre-foreclosure sale in the case of a claim arising from a pre-foreclosure sale. The amended § 203.402 would provide for review of all claims. The amended § 203.402 further provides that, regardless of how FHA reviews a claim for insurance, if FHA determines that a claim includes costs not appropriately curtailed or reduced as established in § 203.402(u)(1), FHA may reduce the claim amount or issue a demand for repayment of all improperly claimed expenses. FHA may also offset future claims if such demand for repayment is not paid by the mortgagee within 30 days.

The regulatory changes proposed by this rule emphasize the importance of meeting established deadlines and provide for the denial of insurance benefits and disallowance of payment of expenses where such deadlines are not met.

III. Costs and Benefits of Proposed Rule

This rule proposes to establish a maximum time period within which an FHA-approved mortgagee must file a claim with FHA for mortgage insurance benefits. Currently, there is not a required timeframe in which mortgagees must file claims for FHA mortgage insurance. The cost to mortgagees of compliance with this proposed rule is expected to be minimal. The cost of compliance for each loan is estimated to be $100, but mortgagees currently bear these costs when they file a claim. This cost consists of 15 minutes of supervisory review and 45 minutes of staff preparation.

This proposed rule offers many important benefits to FHA, including certainty regarding when payment will be sought on claims and increased recovery on REO sales transactions. In recent years, some mortgagees have opted to wait and file multiple FHA mortgage insurance claims at a single point in time, sometimes delaying the filing of claims for 2 years or more. See Table 1 for data on the timing of the filing of insurance claims. The uncertainty regarding the timing of the filing of claims and the high number of claims filed all at once strain FHA resources. This proposed rule will provide a better measurement of expected claims because it provides a definite date for which the mortgagee is no longer able to file a claim. Additionally, this proposed rule would ease the burden on mortgagees by allowing for the curtailment of interest and expenses associated with the actual delay of the mortgagee, rather than all interest and expenses incurred beyond a missed deadline until the termination of the insurance contract.

TABLE 1—MORTGAGEE FILING OF CLAIMS WITHIN SPECIFIED TIME PERIODS FROM FY 2008–2014

Fiscal year	Number of claims processed & paid (Total)	Claims filed within 30 days of good & marketable title or conveyance extension expiration (percent)	Claims filed within 31–60 days of good & marketable title or conveyance extension expiration (percent)	Claims filed within 61–90 days of good & marketable title or conveyance extension expiration (percent)	Claims filed within 91–180 days of good & marketable title or conveyance extension expiration (percent)	Claims filed more than 180 days of good & marketable title or conveyance extension expiration (percent)
FY 2008	55,700	60.64	23.57	4.87	6.04	4.88
FY 2009	68,859	55.72	26.74	5.88	6.45	5.21
FY 2010	98,689	49.87	29.41	7.30	8.01	5.41
FY 2011	90,218	46.03	26.33	9.08	10.46	8.10
FY 2012	100,508	41.20	22.83	7.94	10.08	17.95
FY 2013	110,692	35.08	22.09	10.73	17.10	15.00
2014 (10/1/2013–7/18/2014)	50,260	32.30	17.12	11.10	19.03	20.45

[3] Reasonable diligence timeframes are established for each jurisdiction and updated by mortgagee letter.

[4] Reasonable diligence timeframes are established for each jurisdiction and updated by mortgagee letter.

The uncertainty resulting from long-delayed filing of FHA insurance claims has the potential to negatively impact HUD's ability to project the future state of the MMIF, and, consequently, FHA's ability to fulfill its statutory obligation to safeguard the MMIF. Therefore, establishing a timeframe in which mortgagees must file FHA mortgage insurance claims will bring better predictability to FHA. The ability to better project capitalization of the MMIF will lessen the likelihood of FHA needing to obtain a capital infusion to support the solvency of the MMIF.

When the filing of an FHA insurance claim is delayed, it also results in increased property charges and other expenses included in the insurance benefit claim and can result in additional decline in the value of a property that had been the security for the FHA-insured mortgage foreclosed by the mortgagee, thereby reducing the amount FHA could recover on REO sales transactions. By preventing delayed claim filing, FHA expects to reduce claim cost, primarily due to taxes and insurance, of more than $1,000 per loan for claims filed after the reasonable due diligence timeframes. These benefits, coupled with the minimal compliance costs, motivate FHA's pursuit of this new policy.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would address an issue that has arisen recently and that is the high number of defaults resulting from the downturn in the housing market that began in late 2007 and early 2008. Until that point, FHA-approved mortgagees filed insurance claims within a reasonable time following a foreclosure of the property or the last event that must be taken by an FHA-approved mortgagee prior to filing the insurance claim. HUD understands the strain on resources placed on FHA-approved mortgagees facing a high number of defaults by their mortgagors, and that bundling and filing multiple claims at a single point in time may be administratively convenient for the mortgagees. However, submission of a high number of claims to FHA by one single mortgagee at one single point in time long after the triggering event strains FHA resources and negatively impacts FHA's ability to project the future state of the MMIF, and, consequently, FHA's ability to fulfill its statutory obligation to safeguard the MMIF. The recent filing of multiple claims at a single point in time has emphasized to FHA the need to establish a deadline for filing insurance claims, which are absent from the regulations. While government and the industry have been working diligently since 2008 to implement requirements and measures to be taken to avoid another housing crisis, a clear deadline for filing an insurance claim will benefit both FHA and FHA-approved mortgagees.

HUD believes that the relevant time periods to file a claim for insurance benefits are reasonable periods for all FHA-approved mortgagees, large and small, and will not adversely affect any mortgagee. Additionally, HUD's existing regulations authorize the FHA Commissioner to extend any time period for action to be taken by FHA-approved mortgagees under the regulations of 24 CFR part 203, subpart C, and this authorization allows the FHA Commissioner to take into consideration any difficulties that may be faced by a mortgagee to meet a deadline. Moreover, this rule will benefit mortgagees because it will require mortgagees to only curtail the expenses and interest associated with the length of the delay beyond a required deadline, rather than all otherwise permissible expenses after a missed deadline for the remaining life of the loan, regardless of the length of the delay. At present, a missed foreclosure initiation deadline by one day could result in interest curtailment and disallowance of expenses for the remaining life of the loan, through the entire foreclosure and conveyance process until final termination of the FHA insurance contract.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance—Homes is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance,

Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 42 U.S.C. 3535(d).

■ 2. Add § 203.317a to read as follows:

§ 203.317a Termination for mortgagee's failure to file a claim.

For mortgages endorsed for insurance on or after [insert effective date], the contract of insurance shall be terminated if the mortgagee fails to file a claim within the maximum time periods for filing a claim of insurance benefits in § 203.372.

■ 3. Revise § 203.318 to read as follows:

§ 203.318 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart, except that such written notice is not required for termination of the insurance contract under § 203.317a.

■ 4. Add § 203.372 to read as follows:

§ 203.372 Maximum time period for filing a claim for insurance benefits.

(a) This section applies to mortgages endorsed for insurance on or after [insert effective date].

(b) No claim for insurance benefits may be filed, regardless of claim processing type, more than 12 months after expiration of a period of time from the date of default that is equal to the amount of time provided in the reasonable diligence timeframe established under § 203.356(b) for the jurisdiction unless the Secretary has approved an extension. In the event any applicable redemption period exceeds the claim filing timeframe as stated in the previous sentence, the timeframe will be extended by a period of time equal to the applicable redemption period, unless the conveyance is permitted by FHA during the redemption period.

(c) In addition to the time period in paragraph (b) of this section, no conveyance, pre-foreclosure sale, or deed-in-lieu claim may be filed outside of the time period established by claim type under this paragraph.

(1) *Property acquired by foreclosure.* For a property acquired by foreclosure, a mortgagee must file a claim for insurance benefits no later than 3 months from the date of the occurrence of one the following events, whichever event is the last to occur:

(i) The date of the foreclosure sale;

(ii) The date of expiration of the redemption period (the period allowed the mortgagor to redeem and regain ownership of the property);

(iii) The date that the mortgagee acquires possession of the property (*i.e.,* the property is vacant); or

(iv) Such further time as the Secretary or the Secretary's designee may approve in writing.

(2) *Property not acquired by the Secretary.* For a property not acquired by the Secretary that is sold through a pre-foreclosure sale or the claim without conveyance of title (CWCOT) process, the mortgagee must file a claim for insurance benefits no later than 3 months following the date of closing, for a pre-foreclosure sale; or the date determined in paragraph (b)(1) of this section, for a CWCOT.

(3) *Property acquired by means other than foreclosure.* For a property acquired by deed-in-lieu of foreclosure, the mortgagee must file a claim for insurance benefits no later than 3 months from the date of conveyance of the property to the mortgagee or the date of conveyance of the property to the Secretary, whichever occurs first.

(d) *Resubmission of claims.* The filing of a claim does not toll the time periods set forth in this section or guarantee an extension of time in which to file or refile a claim that has been withdrawn or denied for any reason, including claims resubmitted after the initial claim resulted in a repurchase of a loan or reconveyance of property.

■ 5. Amend § 203.402 to revise paragraph (k) and add paragraph (u) to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(k)(1) Except as provided in paragraphs (k)(1)(i) and (ii) of this section, for properties conveyed to the Secretary and endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, and for properties conveyed to the Secretary and endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of claim payment, on the portion of the insurance benefits paid in cash.

(i) For properties endorsed for insurance on January 24, 2004 through [insert day before effective date]:

(A) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(l), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended; and

(B) When the mortgagee fails to meet the requirements of § 203.356(a) within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may specify in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

(ii) For properties endorsed for insurance on or after [insert effective date]:

(A) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(l), 203.366, or 203.402(u), within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be reduced by the amount determined, based on a pro rata calculation of interest by day, to have been incurred as a result of the failure of the mortgagee to comply with the specified time period; and

(B) When the mortgagee fails to meet the requirements of § 203.356(a) within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may specify in writing), the interest allowance in such cash payment shall be reduced by the amount determined, based on a pro rata calculation of interest by day, to have been incurred as a result of the failure of the mortgagee to comply with the specified time period set administratively by the Secretary.

(2)(i) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date the

mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on January 24, 2004 through [insert day before effective date], an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date that the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date the mortgagee or a person other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(iii) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on or after [insert effective date], an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date that the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date the mortgagee or a person other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, 203.368(i)(3) and (5), and 203.402(u) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be reduced by the amount determined, based on a pro rata calculation of interest by day, to have been incurred as a result of the failure of the mortgagee to comply with the specified time period.

(3)(i) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, and the mortgage was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date of the closing of the pre-foreclosure sale on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures; except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner, in accordance with § 203.370, and the mortgage was endorsed for insurance on January 24, 2004 through [insert day before effective date], an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date of the closing of the pre-foreclosure sale to the date when the payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(iii) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner, in accordance with § 203.370, and the mortgage was endorsed for insurance on or after [insert effective date], an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date of the closing of the pre-foreclosure sale to the date when the payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and

in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be reduced by the amount determined, based on a pro rata calculation of interest by day, to have been incurred as a result of the failure of the mortgagee to comply with the specified time period.

* * * * *

(u) *Disallowance of expenses due to mortgagee failure to meet timelines.* Notwithstanding any other provision of this section, FHA may deny payment of any amount claimed for any expenses, such as taxes, special assessments, hazard insurance, forced placed insurance, flood insurance, homeowner association (HOA)/condominium association (COA) fees or dues, utilities, inspections, debris removal, and any property preservation and protection expenses, that were paid or incurred by or on behalf of the mortgagee during any period of delay or as a result of any delay by the mortgagee in taking any required actions prior to the expiration of the time periods set forth in paragraph (u)(1) of this section.

(1) If a mortgagee fails to comply with any of the timeframes established by the Secretary for actions set forth in this paragraph, the mortgagee must curtail all claim expenses in accordance with paragraph (u)(2) of this section:

(i) The timeframe for taking of First Legal Action to commence foreclosure;

(ii) The reasonable diligence timeframes established by the state in which the property is located;

(iii) The timeframe to convey a property after obtaining title and possession;

(iv) The timeframe for marketing a property; or

(v) Any other timeframe established under this subpart that is applicable to the mortgagee's filing of a claim for insurance benefits.

(2) For a mortgagee that does not meet one or more of the deadlines in paragraph (u)(1) of this section, the mortgagee must curtail on a prorated basis:

(i) Expenses in paragraph (u) of this section incurred during or as a result of any failure by the mortgagee to act within the applicable time period; or

(ii) Expenses that are reasonably estimated to have been incurred during or as a result of any failure by the mortgagee to act within the applicable time period if the amount of expenses specifically incurred beyond the applicable deadline is unavailable or not itemized; and

(iii) Any additional expenses incurred as a result of the mortgagee's failure to comply with the timeframe.

(3)(i) Regardless of the review type, if FHA determines that the mortgagee's claim included expenses incurred after the expiration of a timeframe listed in paragraph (u)(1) of this section, FHA may, in its discretion:

(A) Reduce the amount of insurance benefits paid to the mortgagee; or

(B) Demand for repayment of all expenses that were not curtailed by the mortgagee.

(ii) FHA may offset any future claims made by a mortgagee if the mortgagee does not satisfy any demand for repayment under paragraph (u)(3)(i)(B) of this section within 30 days of the date FHA issues the demand for repayment.

■ 6. Revise the heading of § 203.474 to read as follows:

§ 203.474 Additional limitation on claim submission for rehabilitation loans secured by other than a first mortgage.

* * * * *

Dated: May 11, 2015.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2015–16479 Filed 7–2–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0423]

RIN 1625–AA09

Drawbridge Operation Regulation; Rancocas Creek, Centerton, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation that governs the operation of the SR#38 Bridge in Centerton (Burlington County Route 635) over Rancocas Creek, mile 7.8, at Mt. Laurel, Westampton and Willingboro Townships in Burlington County, NJ. The proposed rule intends to change the current operating regulation and allow the bridge to remain in the closed position for the passage of vessels. There have been no requests for openings since the early 1990's. This proposed rule will also reflect a name change.

DATES: Comments and related material must reach the Coast Guard on or before September 4, 2015. Requests for public meetings must be received by the Coast Guard on or before August 5, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0423 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 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 proposed rule, call or email Mr. Jim Rousseau, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6557, email: *james.l.rousseau2@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

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

A. Public Participation and Request for Comments

We encourage you to participate in this proposed 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 proposed rulemaking (USCG–2015–0423), 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 (*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 via *http://www.regulations.gov,* 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 phone 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–2015–0423] 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 them 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–2015–0423 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 plan to hold a public meeting but you may submit a request for one that reaches the Coast Guard on or before August 5, 2015 using one of the four methods specified under **ADDRESSES**. Please explain why one 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. Basis and Purpose

The current operating schedule for the SR#38 bridge is set out in 33 CFR 117.745 (b) which allows the SR#38 Bridge to operate as follows: From April 1 through October 31 open on signal from 7 a.m. to 11 p.m. From November 1 through March 31 from 7 a.m. to 11 p.m. open on signal if at least 24 hours notice is given. Year round from 11 p.m. to 7 a.m. need not open for the passage of vessels.

The bridge owner, County of Burlington, NJ requested a change in the operation regulation for the SR#38 Bridge, mile 7.8, across Rancocas Creek in Mt. Laurel, NJ and that its name is changed to what it is known locally. The County of Burlington provided information to the Coast Guard about the lack of any openings of the draw spans dating back to the early 1990's. The bridge is currently closed to navigation and vehicular traffic due to emergency repairs and emergency inspections since May 2015. The last requested opening was in the early 1990's as an emergency request. There have been monthly openings as per maintenance requirements.

In the closed-to-navigation position, the SR#38 Bridge has vertical clearances of six feet above mean high water. Typical waterway users include very small recreational vessels including canoes and kayaks.

C. Discussion of Proposed Rule

In order to align the operating schedule of the SR#38 bridge with observed marine traffic the proposed change amends the regulation by adding a paragraph (c) to state ''that the bridge need not open.'' The lack of requests for vessel openings of the drawbridge for over 20 years illustrates that the vessels that use this waterway can safely navigate while the bridge is in the closed-to-navigation position. The current regulation also incorrectly identifies the bridge as the SR#38 Bridge. This proposed change will change the name to the Centerton County Route 635 Bridge. All language in existing paragraph (b) will remain the same except for the removal of the SR#38 bridge reference.

While this proposed rule will allow the bridge to remain closed to navigation, it does not alleviate the bridge owner of his responsibility under 33 CFR 117.7.

D. 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 Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Based on County of Burlington bridge tender logs, there will not be any vessels impacted by this proposed change. No bridge openings have been requested in over 20 years.

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 would not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities for the following reasons: There have been no requests for the bridge to open since the early 1990's, and the bridge has been unable to open since May of 2015.

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 (Public Law 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 would call 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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it 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 will not result in such 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

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 rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides 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 which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.745, revise paragraph (b) introductory text and add paragraph (c) to read as follows:

§ 117.745 Rancocas Creek

* * * * *

(b) The drawspan for the Riverside-Delanco/SR#543 Drawbridge, mile 1.3 at Riverside must operate as follows:

* * * * *

(c) The draw of the Centerton County Route 635 Bridge, mile 7.8, at Mt. Laurel, need not open for the passage of vessels.

Dated: June 11, 2015.

Robert J. Tarantino,

Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2015–16518 Filed 7–2–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0633; FRL–9929–06–Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a revision to the Arkansas State Implementation Plan (SIP) submitted by the State of Arkansas on September 16, 2009, for the purpose of addressing the requirements of the Clean Air Act (CAA) regarding interference with other states' programs for visibility protection for the 2006

revised 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). The EPA is proposing that the Federal Implementation Plan (FIP) we proposed on April 8, 2015, to address certain regional haze and visibility transport requirements for the State of Arkansas also remedies the deficiency created by our proposed disapproval of Arkansas' SIP submittal to address the requirement regarding interference with other states' programs for visibility protection for the 2006 $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before August 5, 2015.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0633, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: medina.dayana@epa.gov.*
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Mail or delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0633. Our policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to us without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, 214–665–7241; *medina.dayana@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Medina or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

A. Interstate Transport and the 2006 $PM_{2.5}$ NAAQS

In 2006, we revised the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m^3 (October 17, 2006, 71 FR 6114). SIPs addressing the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA are due to us within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe).[1] Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements, sometimes referred to as prongs, related to the evaluation of impacts of interstate transport of air pollutants with respect to a new or revised NAAQS. In this action for the State of Arkansas, we are addressing the second element of section 110(a)(2)(D)(i)(II) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. The second element of section 110(a)(2)(D)(i)(II) of the CAA (hereafter referred to as Prong 4) requires that states have a SIP, or submit a SIP revision, containing provisions prohibiting emissions from within a state from interfering with measures required to be included in the implementation plan for any other state under the provisions of Part C of the CAA protecting visibility. Because of the impacts on visibility from the interstate transport of pollutants, we interpret this ''good neighbor'' provision in section 110 of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas.[2]

B. Arkansas' Interstate Visibility Transport Submittal for the 2006 $PM_{2.5}$ NAAQS

On September 16, 2009, Arkansas submitted a SIP revision intended to address the requirements of Prong 4 with respect to visibility transport for the 2006 $PM_{2.5}$ NAAQS. This submittal also addressed other ''infrastructure'' elements specified in CAA section 110(a)(2), necessary to implement, maintain, and enforce the 2006 $PM_{2.5}$ NAAQS. We previously acted on the portions of the September 16, 2009 submittal that addressed these other infrastructure elements specified in CAA Section 110(a)(2).[3] Arkansas' September 16, 2009 SIP submittal that addresses transport for the 2006 $PM_{2.5}$ NAAQS may be accessed through the *www.regulations.gov* Web site (Docket No. EPA–R06–OAR–2008–0633). Arkansas indicated in the submittal that it meets the required protection of visibility provisions of CAA section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS.

II. EPA's Evaluation

A. EPA's Approach for Evaluating Interstate Visibility Transport

In three memos released in 2006, 2009, and 2013, we provided guidance to the states regarding their obligations with respect to Prong 4. In the 2006 memo, we informed states that they could satisfy prong 4 for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS by making a simple SIP submission confirming that it was not possible at the time to assess whether there was any interference with measures in the SIPs of other states designed to protect visibility until the states' regional haze SIPs were submitted and approved.[4] In the 2009 memo, we recommended that a state could meet prong 4 requirements

[1] CAA Section 110(a)(1).

[2] 64 FR 35714, 35735 (July 1, 1999).

[3] 77 FR 50033 (August 20, 2012) and 78 FR 53269 (August 29, 2013).

[4] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards, at 9–10 (Aug. 15, 2006).

through its Regional Haze SIP.[5] EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the regional haze rule. This interpretation is consistent with the requirement in the regional haze rule that a state participating in a regional planning process must include ''all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' See 40 CFR 51.308(d)(3)(ii). Most recently, in the 2013 memo, we suggest ways prong 4 obligations can be satisfied with respect to the 2008 ozone NAAQS, 2010 nitrogen dioxide (NO_2) NAAQS, 2010 sulfur dioxide (SO_2) NAAQS, and 2012 $PM_{2.5}$ NAAQS infrastructure SIPs.[6] There, we reiterated that states could satisfy prong 4 by confirming that they had fully approved regional haze SIPs.[7] We reasoned that a fully approved regional haze SIP necessarily would ensure that emissions from a state's sources were not interfering with measures required to be included in other states' SIPs to protect visibility.[8] Alternatively, we explained that a state could satisfy its prong 4 obligations by including in its infrastructure SIP a demonstration that emissions within its jurisdiction do not interfere with other states' plans to protect visibility.[9] We clarified that such a submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions were sufficient to comply with any mutually agreed upon RPGs for downwind Class I areas.[10]

B. Evaluation of Arkansas' Submittal

An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* SO_2, nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In the September 16, 2009 infrastructure SIP submittal for the 2006 $PM_{2.5}$ NAAQS, Arkansas indicated that it meets the required protection of visibility provisions of section 110(a)(2)(D)(i) of the CAA but did not explain how it meets this requirement. We are proposing to find that Arkansas' SIP does not fully ensure that emissions from sources in Arkansas do not interfere with other states' visibility programs as required under the Prong 4 provision because the SIP does not demonstrate how the requirement is satisfied. Furthermore, we previously found the Arkansas Regional Haze SIP to be deficient and partially disapproved it. In our final rule published on March 12, 2012, we partially approved and partially disapproved the SIP revision submitted by Arkansas in 2008 to address the regional haze requirements (Arkansas Regional Haze SIP).[11] This action included a disapproval of a large portion of Arkansas' best available retrofit technology (BART) determinations for its subject to BART sources, as we concluded these BART determinations did not meet the requirements of the CAA and our regional haze regulations. As a result, the corresponding emissions reductions from Arkansas sources that other states had relied upon in their regional haze SIPs would not take place. Therefore, we are proposing to disapprove the portion of Arkansas' September 16, 2009 SIP submittal that addresses the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 $PM_{2.5}$ NAAQS.

Under section 110(c) of the Act, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within 2 years unless we approve a SIP revision correcting the deficiencies before promulgating a FIP. Specifically, CAA section 110(c) provides that the Administrator shall promulgate a FIP within 2 years after the Administrator disapproves a state implementation plan submission ''unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.'' The term ''Federal implementation plan'' is defined in section 302(y) of the CAA in pertinent part as a plan promulgated by the Administrator to correct an inadequacy in a SIP. Thus, upon finalizing our proposed disapproval of Arkansas' SIP submittal addressing the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 $PM_{2.5}$ NAAQS, we would have an obligation to promulgate a FIP for Arkansas, unless we first approve a SIP revision that corrects the deficiencies in the disapproved SIP submittal.

Our April 8, 2015 proposed FIP corrects the disapproved portions of the Arkansas Regional Haze SIP. The disapproved portions included a majority of the State's BART determinations, the State's reasonable progress analysis and reasonable progress goals, and a portion of the State's long term strategies for its Class I areas.[12] Our proposed FIP addresses BART requirements for nine units at six facilities, proposes a reasonable progress analysis and controls for two units at one power plant under the reasonable progress requirements, and proposes revised reasonable progress goals and long-term strategies for Arkansas' two Class I areas. Our proposed Regional Haze FIP together with the already approved portions of the Arkansas Regional Haze SIP address all regional haze requirements for Arkansas and would ensure that the emissions reductions from Arkansas sources that other states relied upon in their regional haze SIPs are achieved. As such, there would be adequate provisions prohibiting any source or other type of emissions activity within Arkansas from emitting any air pollutant in amounts

[5] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), at 5 (Sept. 25, 2009).

[6] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[7] *Id.* at 33.

[8] *Id.*

[9] *Id.* at 34.

[10] *Id.*

[11] 77 FR 14604.

[12] 77 FR 14604.

which would interfere with measures required to be included in the applicable implementation plan for any other state to protect visibility.

III. Proposed Action

We are proposing to disapprove a portion of a SIP submittal that was submitted by Arkansas on September 16, 2009. The portion of the SIP submittal we are proposing to disapprove addresses the CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state for the 2006 24-hour $PM_{2.5}$ NAAQS. We are proposing to find that the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility transport for the 2006 $PM_{2.5}$ NAAQS will be satisfied by the combination of the emission control measures in the Regional Haze FIP we proposed on April 8, 2015, and the already approved portions of the Arkansas Regional Haze SIP. We are proposing to determine that the Regional Haze FIP we proposed for Arkansas on April 8, 2015, will satisfy our FIP obligation for interstate transport of air pollution and visibility protection for the 2006 24-hour $PM_{2.5}$ NAAQS. We will not finalize our proposal that the Regional Haze FIP addresses our FIP obligation unless and until, we finalize our action on the Regional Haze FIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.*, higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: June 18, 2015.

Ron Curry,

Regional Administrator, Region 6.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Amend § 52.173 by adding paragraphs (c) and (d) to read as follows:

Subpart E—Arkansas

§ 52.173 Visibility Protection

* * * * *

(c) The portion of the SIP addressing noninterference with measures required to protect visibility in any other state are disapproved for the 2006 24-hour $PM_{2.5}$ NAAQS.

(d) The deficiencies in the portion of the SIP pertaining to adequate provisions to prohibit emissions in Arkansas from interfering with measures required to protect visibility in any other state for the 2006 24-hour $PM_{2.5}$ NAAQS, submitted on September 16, 2009, are remedied by Section 52.173(c).

[FR Doc. 2015–16389 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0075; FRL–9929–72–Region 5]

Approval of Air Quality Implementation Plans; Sheboygan County, Wisconsin 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds and oxides of nitrogen for Sheboygan County, Wisconsin. Wisconsin submitted an Early Progress Plan for Sheboygan County on January 16, 2015. This submittal was developed to establish MVEBs for the Sheboygan 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Sheboygan 8-hour ozone area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the 2011 base year through a 2015 target year.

DATES: Comments must be received on or before August 5, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0075, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule, which is located in the Rules section of this **Federal Register**. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 19, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–16398 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[GN Docket No. 14–28; DA 15–731]

Protecting and Promoting the Open Internet

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission via the Consumer and Governmental Affairs Bureau (CGB), seeks comment on whether to maintain a temporary exemption for smaller providers from certain enhancements to the existing transparency rules that govern the content and format of disclosures made by providers of broadband Internet access service.

DATES: Comments are due on or before August 5, 2015. Reply comments are due on or before September 4, 2015.

ADDRESSES: You may submit comments, identified by GN Docket No. 14–28, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and GN Docket No. 14–28.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving 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 Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by 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 should be addressed to 445 12th Street SW., Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, (717) 338–2797.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 15–731, released June 22, 2015 in GN Docket No. 14–28, seeking comment on the exemption from Open Internet enhanced transparency requirements. The full text of document DA 15–731 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA 15–731 can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/document/cgb-seek-comment-exemption-open-internet-enhanced-transparency.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to

be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act

The Commission currently has an Office and Management and Budget (OMB) collection 3060–1158 pending OMB's review and approval. The 60 day **Federal Register** notice seeking comment on the revision was published in the **Federal Register** on May 20, 2015, at 80 FR 29000. This collection contains information collection requirements for the Open Internet transparency rules, which are subject to the Paperwork Reduction Act (PRA) of 1995. Pub. L. 104–13. However, document DA 15–731 does not modify the existing information collection requirements contained in OMB collection 3060–1158, and it does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002. Public Law 107–198. *See also* 44 U.S.C. 3506(c)(4).

Regulatory Flexibility Analysis

The *2015 Open Internet Order* included a Final Regulatory Flexibility Analysis (FRFA) pursuant to 5 U.S.C. 603, discussing the impact on small entities of the policies and rules adopted therein. The Commission incorporates the FRFA and invites parties to file comments in light of document DA 15–731.

Synopsis

1. In the *2015 Open Internet Order,* published at 80 FR 19738, April 13, 2015, the Commission temporarily exempted those providers with 100,000 or fewer broadband subscribers as per their most recent Form 477, aggregated over all the providers' affiliates from the enhanced transparency requirements adopted therein. At the same time, the Commission stated that ''both the appropriateness of the exemption and the [subscriber] threshold require further deliberation,'' and directed CGB to seek comment on the exemption and to adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015.

2. While the Commission described the exemption threshold using the terms ''subscribers'' and ''subscriber lines,'' it emphasized that the relevant metric should be that used on Form 477. That metric is broadband ''connections,'' the broadband equivalent of subscriber lines, which the Commission used in the analogous exemption adopted in the Rural Call Completion Order, published at 78 FR 76218, December 17, 2013. For these reasons, we make clear that the exemption from the enhanced transparency requirements applies to providers with 100,000 or fewer broadband connections.

3. *Small Business Exemption.* The Commission seeks comment on whether the enhancements to the transparency rule raise compliance burden concerns that warrant making permanent the exemption. The Commission notes that it did not adopt some of the enhancements originally proposed and found those it did adopt were ''modest in nature.'' The Commission seeks comment on whether the adopted enhanced transparency requirements nevertheless impose burdens on smaller providers sufficient to justify retaining the exemption.

4. The Commission seeks specific comment on the following questions. What is the burden of the enhanced disclosures to smaller providers as measured in financial and other resources, and how is the burden disproportionately experienced by smaller providers? To the extent that concerns remain regarding any burdens, what is the corresponding benefit to customers of smaller providers of the information contained in those disclosures? For example, to what extent are customers of exempted providers deprived of information they need to understand the services they purchase and receive, and to monitor practices that could undermine an open Internet? Are rural customers likely to be disproportionally affected by exempting smaller providers from the enhanced disclosure requirements?

5. How should any benefits of the enhanced transparency requirements to customers of exempted providers be balanced against any public interest benefits of reducing burdens to the providers? Will the reduction of compliance burdens for smaller providers benefit consumers in the areas served by those providers by, for example, facilitating broadband deployment, lower prices, or better quality services for consumers?

6. If the Commission does not make the exemption permanent, would a one-time temporary extension of the exemption for some period be necessary to allow a smooth transition to full compliance, and would such an approach be more beneficial to consumers than a permanent exemption? What period of time would be appropriate for smaller providers to adequately address the potential burdens associated with the enhanced transparency rules? How does the subscriber threshold discussed below affect this analysis? Should the Commission require carriers to report to the Commission on their progress with meeting the goals of the enhanced transparency rules? What conditions may be appropriate for a one-time, temporary extension of the current exemption? What factors should the Commission consider in determining the limitations of a one-time, temporary extension of the exemption? The Commission seeks comment on these and any other relevant issues.

7. *Small Provider Threshold.* The Commission set the smaller provider threshold for purposes of the exemption at 100,000 or fewer broadband connections as measured by their most recent Form 477, aggregated over all affiliates. Is this the right threshold for any extension of the exemption? If not, what is a more appropriate level to identify those providers likely to be most disproportionately affected by the new disclosure requirements? How should the Commission determine whether a provider qualifies for the exemption if it is required to file a Form 477 but has not done so? Should such providers be ineligible for the exemption until they have done so? Are there reasons to adopt thresholds that vary for fixed and mobile providers? The Commission notes that the Final Regulatory Flexibility Analysis contained in the *2015 Open Internet Order* discusses a number of ways to define the small entities impacted by that Order. The Commission seeks comment on these and any other issues commenters deem relevant.

Federal Communications Commission.

Alison Kutler,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2015–16493 Filed 7–2–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 80, No. 128
Monday, July 6, 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.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of July 9 Advisory Committee on Voluntary Foreign Aid Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Thursday, July 9, 2015.

Time: 2:00–4:00 p.m.

Location: Horizon Ballroom, The Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Washington DC 20004.

Purpose

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together USAID and private voluntary organization officials, representatives from universities, international nongovernment organizations, U.S. businesses, and government, multilateral, and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

Agenda

USAID Acting Administrator Ambassador Alfonso E. Lenhardt will make opening remarks, followed by panel discussions among ACVFA members and USAID leadership on USAID Forward and Local Solutions. The full meeting agenda will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee*.

Stakeholders

The meeting is free and open to the public. Registration information will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, *acvfa@usaid.gov.*

Dated: June 23, 2015.

Sylvia Joyner,

Program Specialist, U.S. Agency for International Development.

[FR Doc. 2015–15800 Filed 7–2–15; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Program and Reporting System (FPRS)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection, which is a revision of a currently approved form.

The purpose of the Food and Programs Reporting System (FPRS) is to facilitate data gathering for the reporting of data for the Supplemental Nutrition Assistance Program (SNAP) and the Special Nutrition Programs. FPRS consolidated certain programmatic and financial data reporting requirements in an electronic reporting system and is the primary collection point for FNS program performance statistics and financial data from State agencies (SA), Indian Tribal Organizations (ITO), and U.S. Territories participating in the nutrition assistance programs.

DATES: Written comments must be submitted on or before September 4, 2015.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden hours, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to Jane Duffield, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 818, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Jane Duffield at 703–605–0795, Room 824, or via email to *SNAPSAB@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of FNS during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Room 824, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will also be a matter of public record.

Contact for Further Information: Requests for additional information should be directed to Kelly Stewart at *SNAPSAB@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Food Program and Reporting System.

OMB Number: 0584–0594.

Form Number and Name: FNS–366B—Program and Budget Summary Statement Part B—Program Activity Statement.

Expiration Date: 06/30/2016.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 16(a) of the Food and Nutrition Act of 2008 (the Act) authorizes 50 percent Federal reimbursement for State agency costs to administer the Supplemental Nutrition Assistance Program (SNAP). SNAP regulations at 7 CFR 272.2(a) require that State agencies plan and budget program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection

Statement and the Program Activity Statement (§ 272.2(a)(2)). Under § 272.2(c), the State agency shall submit to FNS for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). Currently, regulations at § 272.2(e) require SA submit the Program Activity Statement, or form FNS–366B, to FNS no later than 45 days after the end of the State agency's fiscal year, which is typically August 15 for most States. Form FNS–366B is required to substantiate the costs the State agency expects to incur during the next fiscal year. It currently provides data on the number of SNAP applications the State agency processed, the number of fair hearings the State agency conducted, and the fraud control activities the State agency engaged. FNS uses the data to monitor State agency activity levels and performance.

FNS National and Regional Office staff developed national standardized Management Evaluation (ME) protocols for both Recipient Integrity and Program Access. The ME process provides a comprehensive assessment of how effectively States are managing SNAP activities related to the topic area and an opportunity for communication between FNS and State agencies on those management areas. MEs provided FNS the proper channel to discuss with State and local officials ideas for improving form FNS–366B, particularly Section C. In August 2014, the U.S. Government Accountability Office (GAO) completed a study of FNS' oversight of State recipient fraud responsibilities (GAO–14–641, SNAP: Enhanced Detection Tools Could Improve Efforts to Combat Recipient Fraud). GAO concluded FNS' ability to monitor State anti-fraud activities and develop more effective anti-fraud strategies was hindered by the lack of consistency and reliability of State reported data on form FNS–366B. FNS published a Request for Information (RFI) in the **Federal Register** on October 16, 2014, (79 FR 62096) seeking State agency feedback on the usefulness of the data collected and the level of difficulty completing sections E and F of the form. FNS received responses from 17 State agencies and 1 National organization and the feedback was generally consistent.

Based on the GAO report, RFI responses, and results of MEs completed to date, it is apparent that State reporting lacks consistency and form FNS–366B data elements and instructions are not clearly defined. Due to the lack of clarity in these instructions, responses are left open to varying interpretation, among States, leading to unreliable reported data. Form FNS–366B lacks certain data elements that would increase its usefulness by providing more accurate information from State agencies on SNAP application timeliness, and on the types and impacts of fraud prevention activities in use. The revision of this form will improve reliability and accuracy of State reporting by adding, removing, and revising data elements related to application processing, fraud investigations, administrative disqualification hearings and prosecutions. By collecting more accurate and useful data SNAP can target technical assistance to those State agencies that need the most significant improvements to their application and recipient integrity processes. The changes to each section of form FNS–366B are specified below. Revisions were made to the form instructions for all revised sections to reflect the new and revised data elements. The revised form is available for review with this docket on *www.Regulations.gov*, in Supporting Documents.

Section C.—Certifications: The current form collects information on the approval and denial of initial applications, recertifications, and expedited service. Recent reviews indicate the data reported by States in section C of form FNS–366B are inaccurate and therefore, unreliable. In 2014, FNS introduced a new warning process for States with poor application processing timeliness. FNS has identified inconsistencies between State data received under the warning process and data reported on form FNS–366B. In addition, FNS has identified that State backlogs of initial and recertification applications are an indicator that poor program compliance is adversely affecting program access. Updating form FNS–366B instructions to clarify requested data elements and to include data on overdue applications will assist FNS in monitoring State application timeliness performance. To improve reporting accuracy and usefulness, revisions to form FNS–366B in Section C include:

(1) Addition of the words ''Approved and Denied'' in header row (C) *Total* in section C, *Certifications.*

(2) Addition of new column D with subset columns D(1)—D(4), under the header ''Approved Overdue Applications'' in section C, *Certifications.*

a. New column D will collect the counts of overdue applications for ''Initial Applications'' (line 1), ''Recertifications'' (line 2), and ''Total'' (line 3) broken out by ''1–30 days'' (Column D(1)), ''31–60 days'' (Column D(2)), ''61–90 days'' (Column D(3)), and ''Over 91 days'' (Column D(4)).

Section D—Fair Hearings: There are no changes to this section. Section D collects data on the number of fair hearings requested and held, as well as the outcomes of those fair hearings.

Sections E–G—Fraud Activity: Information currently collected on this form includes the total number of fraud referrals, investigations, prosecutions, disqualification consent agreements (DCA), administrative disqualification hearings (ADH), and ADH waivers for the reporting fiscal year. This form further collects data on program dollars associated with pre-certification and post-certification fraud investigations, as well as program dollars that may be recovered when a disqualification is established. Form FNS–366B lacks certain data elements that would increase its usefulness and provide more accurate information on the types and impacts of State fraud prevention activities. In the revised form FNS has replaced insufficient data elements with new reporting elements that better measure the effectiveness and impact of fraud prevention activities, such as those focusing on SNAP recipient benefit trafficking investigations and disqualifications, allowing FNS to better focus fraud prevention and detection strategies where needed. FNS has also added operational efficiency and cost avoidance measures to quantify a return on investment from fraud control activities. To improve reporting accuracy and usefulness, revisions to form FNS–366B in Sections E–G include:

Section E.—Fraud Investigations:

(1) Removed requirement to separate investigations by ''Pre-certification'' (line 1) and ''Post-certification'' (line 2) and replaced with requirement to separate investigations by ''Eligibility Fraud'' (line 1) and ''Trafficking'' (line 2)

(2) Removed ''Referred for Invest.'' (column a)

(3) Changed ''Invest Completed—Negative'' (column b) to ''Completed, Individual Not Referred for ADH or Prosecution''

a. To collect data on whether investigations not resulting in a fraud Intentional Program Violation (IPV) did result in an overissuance claim due to an Inadvertent Household Error (IHE), sub-columns were added in this section for: ''(1) No IHE established'', ''(2) IHE Established'', and ''(3) $ IHE Established''

(4) Changed ''Invest Completed—Positive'' (column c) to ''Completed, Individual Referred for ADH or Prosecution'' (shifted to column a)

(5) Removed ''Program Dollars'' (column d) and ''Invest Cancelled'' (column f)

(6) Changed ''Invest Pending'' (column e) to ''Open Investigations, Individuals'' (shifted to column c)

(7) To collect data on operational efficiency, added ''Average # of Days per Investigation'' (column d), ''Investigation Costs'' (column e), and ''Investigation FTE'' (column f)

Section F.—Administrative Disqualification Hearings:

(1) Split Section F on current form into sections F and G on revised form. Section F now collects data on Administrative Disqualification Hearings (ADH) only.

(2) Removed ''Cases (Persons) Referred'' (column a)

(3) Changed ''Upheld Convictions'' (column d) to ''ADH Completed, Individual Disqualified'' (shifted to column a)

(4) Changed ''Waivers'' (column c) to ''Waiver Signed, Individual Disqualified'' (shifted to column b)

(5) Changed ''Actually Acquitted'' (column e) to ''ADH Completed, Individual Not Disqualified'' (shifted to column c)

(6) To collect data on operational efficiency, added ''Average # of Days from Referral to Disqualification'' (column d)

(7) Changed ''Program Dollars'' (shifted to column e) to include ''Amount Subject to Claim'' (e1) and ''Cost Savings'' (e2)

(8) Removed ''Pending Decisions'' (column g)

(9) To capture cases referred for ADH, but awaiting action by the State agency, added ''Referred Individuals Awaiting Scheduling'' (column f)

a. To collect data on the number of days cases await ADH scheduling, sub-columns were added in this section for: ''(1) 0–180 Days'', ''(2) 181–365 Days'', and ''(3) 366+ Days''.

(10) Shifted ''Decisions Overdue'' to column g

Section G.—Prosecutions:

(1) Split Section F on current form into sections F and G on revised form. Section G proposes to collect data on Prosecutions only.

(2) Removed ''Cases (Persons) Referred'' (column a)

(3) Changed ''Upheld Convictions'' (column d) to ''Prosecution Completed, Individual Disqualified'' (shifted to column a)

(4) Changed ''Waivers'' (column c) to ''DCA Signed, Individual Disqualified'' (shifted to column b)

(5) Changed ''Actually Acquitted'' (column e) to ''Prosecution Completed, Individual Not Disqualified'' (shifted to column c)

(6) To collect data on operational efficiency, added ''Average # Days from Referral to Disqualification'' (column d)

(7) Changed ''Program Dollars'' (shifted to column e) to include ''Amount Subject to Claim'' (e1) and ''Cost Savings'' (e2)

(8) Removed ''Pending Decisions'' (column g)

(9) To capture cases referred to the prosecuting agency, but awaiting action, added ''Referred Individuals, No Action by Prosecutor'' (column f)

a. To collect data on the status of cases awaiting action, sub-columns were added in this section for: ''(1) 366+ Days'' and ''(2) Reclaimed for ADH''.

Section H.—Remarks:

(1) Added remarks section (Section H) to allow space for State agencies to provide any additional information necessary to support data reported on the FNS–366B.

The current burden for FNS 366 B is 950.29 hours. As a result of these revisions, there is an anticipated burden of 1,855, an increase of 904.71 hours for form FNS–366B. As this is a revision to form FNS–366B within the FPRS system, the total FPRS burden is summarized below.

Reporting Burden Estimates

Form FNS–366B. Fifty-three (53) SA submit 1 response annually for a total of 53 annual responses. The annual reporting burden for form FNS–366B report is 35 hours per respondent to complete the form. The reporting burden for form FNS–366B alone is 1,855 hours (53SA × 1 annual report = 53 total annual responses × 35 hours per response = 1,855). There are recordkeeping burdens which are maintained in a separated OMB Control No.: 0584–0083, Expiration Date: 4/30/2017. As this is a revision to the reporting burden estimates for form FNS–366B within the FPRS system, the total FPRS burden is summarized below.

Affected Public: State, Local and Tribal Government Agencies.

Estimated Number of Respondents: 3,266.

Number of Responses per Respondent: 7.3.

Estimated Total Annual Responses: 23,789.

Hours per Response: 3.7.

Total Annual Burden Hours: 87,716.

Dated: June 25, 2015.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–16476 Filed 7–2–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://wwwls.usda.gov/pts/.*

DATES: The meeting will be held July 22, 2015, at 10:00 a.m. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line has been set up for those wishing to listen in by telephone, for the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fiords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Diane L. Olson, RAC Coordinator, by phone at 907–228–4105 or via email at *dianelolson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To update members on past RAC projects, and

2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 10, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Diane L. Olson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *dianelolson@fs.fed.us,* or via facsimile to 907–225–8738. Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 25, 2015.

Jeffrey DeFreest,

District Ranger.

[FR Doc. 2015–16318 Filed 7–2–15; 8:45 am]

BILLING CODE 3411–15–M

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations which implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to extend the currently approved information collection in support of authorizations to use the 4–H Club Name and/or Emblem.

DATES: Written comments on this notice must be received by September 4, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *rmartin@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216

FOR FURTHER INFORMATION CONTACT: Robert Martin, eGovernment Program Leader; Email: *rmartin@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Authorization to Use the 4–H Club Name and/or Emblem.

OMB Number: 0524–0034.

Expiration Date of Current Approval: January 31, 2016.

Type of Request: Intent to seek approval for the extension of a currently approved information collection for three years.

Abstract: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress (18 U.S.C. 707). Use of the 4–H Club Name and/or Emblem by anyone other than 4–H Clubs and those duly authorized by them, representatives of the United States Department of Agriculture, the land grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Administrator of NIFA to authorize others to use the 4–H Club Name and Emblem. The Administrator has promulgated regulations at 7 CFR part 8 that govern such use. The regulatory requirements for use of the 4–H Club Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Pursuant to provisions of 7 CFR part 8 anyone requesting authorization from the Administrator to use the 4–H Club Name and Emblem is asked to describe the proposed use in a formal application. The collection of this information is used to determine whether the applicant's proposed use will meet the regulatory requirements in 7 CFR part 8 and whether an authorization for use should be granted.

Need and Use of the Information: NIFA will collect information on the name of the individual, partnership, corporation, or association; the organizational address; the name of an authorized representative; the telephone number, fax number, and email address; the proposed use of the 4–H Club Name and/or Emblem; and the plan for sale or distribution of the product bearing the 4–H Club Name and/or Emblem. The information collected by NIFA will be used to determine if those applying to use the 4–H Name and/or Emblem meet the regulatory requirements. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the regulatory requirements as well as 4–H educational goals and objectives.

Estimate of Burden: No changes have been proposed to this collection and the public reporting burden remains at the estimated average of 0.5 hours per response for 75 respondents.

Respondents: Individuals, households, business or other for-profit or not-for-profit institutions.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 23rd day of June, 2015.

Ann Bartuska,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 2015–16470 Filed 7–2–15; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request Office of Management and Budget (OMB) approval for the revision and extension of a currently approved information collection for the Expanded Food and Nutrition Education Program (EFNEP).

DATES: Written comments on this notice must be received by September 4, 2015, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *rmartin@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Robert Martin, eGovernment Program Leader; Email: *rmartin@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Expanded Food and Nutrition Education Program.

OMB Number: 0524–0044.

Expiration Date of Current Approval: January 31, 2016.

Type of Request: Intent to seek approval for the revision and extension of a currently approved information collection for three years.

Abstract: NIFA's Expanded Food and Nutrition Education Program (EFNEP) is a unique program that began in 1969 and is designed to reach limited resource audiences, especially youth and families with young children. EFNEP is authorized under section 1425 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3175) and funded under section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)). Extension professionals train and supervise paraprofessionals and volunteers who teach food and nutrition information and skills to limited resource families and youth. EFNEP operates through the 1862 and 1890 Land Grant Universities (LGU) in all 50 States, the District of Columbia, and in American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands.

The objectives of EFNEP are to assist limited resource families and youth in acquiring the knowledge, skills, attitudes, and changed behaviors necessary for nutritionally sound diets, and to contribute to their personal development and the improvement of the total family diet and nutritional well-being.

NIFA sponsors an integrated data collection process that is used at the county, State, and Federal level. The current data collection system, the Web-based Nutrition Education Evaluation and Reporting System (WebNEERS), captures EFNEP impacts. Its purpose is to gauge if the Federal assistance provided has had an impact on the target audience. It also enables EFNEP staff to make programmatic improvements in delivering nutrition education. Further, the data collected provide information for program management decisions and diagnostic assessments of participant needs. In order to capture all of EFNEP's reporting requirements in one place, EFNEP program plans and budgetary data are now submitted, reviewed, and approved through WebNEERS. These EFNEP specific reporting requirements are tied to release of Federal EFNEP funds.

Specifications for this system were developed by a committee of representatives from across the United States and are in compliance with Federal standards for maintaining, collecting, and presenting data on race and ethnicity and protecting personally identifiable information.

WebNEERS stores information on: (1) Adult program participants, their family structure, and dietary practices; (2) youth group participants; (3) staff; (4) annual budgets; and (5) annual program plans. WebNEERS is one web-based system which operates on three levels: The Region level (County), Institution level (university), and the Federal level. Data are entered at the regional level. They are available in aggregated form at the Institution level in real time. University staff generates State-level reports for State-level stakeholders and to guide program management decisions (State also refers to the District of Columbia and the insular areas; in States that have both 1862 and 1890 LGUs, it refers to the individual universities). Data are not available to the Federal level until the university staff submits them. This process allows for State and National assessments of the program's impact. The National data are used to create National reports which are made available to the public.

There are revisions to the currently approved collection. WebNEERS is an update to the currently approved NEERS5 system. WebNEERS is a secure online system designed, hosted, and maintained by Clemson University. WebNEERS is accessed through the Internet via Internet Explorer, Firefox, Google Chrome, and Safari web browsers. It can also be accessed through mobile devices and tablets. It incorporates local, university, and Federal components from the NEERS5 system as well as new elements such as the EFNEP 5-Year Plan/Annual Update (program plan), the EFNEP budget and budget justification, and the social ecological framework of the Community Nutrition Education (CNE) logic model. Only approved users can access WebNEERS and each user can only access data based on his/her defined permissions. The updated system also has the capability to export raw data for external analysis. Data exported from WebNEERS do not include personally identifiable information. Several stakeholder groups provided input on the updated system to ensure that EFNEP continues to collect only those data which it needs for evaluation and reporting. These groups also gave feedback to improve user interfaces and to improve functionality and capabilities of the system.

The evaluation processes of EFNEP remain consistent with the requirements of Congressional legislation and OMB. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62), the GPRA Modernization Act of 2010 (Pub. L. 111–352), the Federal Agriculture Improvement Reform (FAIR) Act of 1996 (Pub. L. 104–127), and the Agricultural Research, Extension and Education Reform Act (AREERA) of 1998 (Pub. L. 105–185), together with OMB requirements, support the reporting requirements requested in this information collection. Section 804 of the FAIR act requires the development and implementation of a system to monitor and evaluate agricultural research and extension activities in order to measure the impact and effectiveness of research, extension, and education programs. AREERA requires a performance evaluation to be conducted to determine whether Federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance.

Estimate of Burden: The total annual estimated burden for WebNEERS is 86,826 hours for this data collection process—for participant education and data entry, aggregation, and reporting; and for preparation, review, and submission of EFNEP program plans and budgetary information. The burden for respondents was estimated through feedback from a survey sent by Clemson University to nine EFNEP Coordinators and their data managers. Seven surveys were returned. The estimate was 1,158 hours per response and annually there are 75 total responses. Burden estimates

are seven percent lower than they were for NEERS5 even with the inclusion of the new reporting elements (EFNEP program plans and budgets). This indicates that even though additional reporting requirements were included in the updated system, the overall burden to the users was reduced.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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.

Done in Washington, DC, this 23rd day of June, 2015.

Ann Bartuska,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 2015–16472 Filed 7–2–15; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the solicitation of applications for funds available under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the Program), formerly the Biorefinery Assistance Program, to provide guaranteed loans to fund the development, construction, and Retrofitting of Commercial Scale biorefineries using Eligible Technology and of Biobased Product Manufacturing facilities that use Technologically New Commercial Scale processing and manufacturing equipment to convert Renewable Chemicals and other biobased outputs of biorefineries into end-user products, on a Commercial Scale.

DATES: With this Notice, the Agency is announcing two separate application cycles, which are established in accordance with 7 CFR 4279.260(b), with application deadlines of October 1, 2015, and April 1, 2016.

The first application cycle begins with publication of this Notice and extends no later than 4:30 p.m. Eastern Daylight Time, October 1, 2015. The second application cycle begins at the close of the first application cycle and extends no later than 4:30 p.m. Eastern Daylight Time, April 1, 2016. Applications received after the close of the second application cycle will be considered in the subsequent application cycle. All applications received prior to October 1, 2015, will be evaluated under 7 CFR part 4279, subpart B, published in the **Federal Register** on June 24, 2015.

ADDRESSES: Applications and forms may be obtained from:

- USDA, Rural Business-Cooperative Service, Energy Division, Attention: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.
- Agency Web site: *http://forms.sc.egov.usda.gov/eForms*. Follow instructions for obtaining the application and forms. Application materials can also be obtained from the Agency's Web site. *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program*.

FOR FURTHER INFORMATION CONTACT: Todd Hubbell, Rural Business-Cooperative Service, Energy Division, Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, USDA, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Program, as covered in this Notice, have been submitted to the Office of Management Budget (OMB) under OMB Control Number 0570–0065, for OMB approval.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an Agency of USDA in the Rural Development mission area).

Solicitation Opportunity Title: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.

Announcement Type: Notice of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: The CFDA number for this Notice is 10.865.

Dates: To receive Program funds for the first application cycle, applications must be received in the USDA Rural Business-Cooperative Service, Energy Division no later than 4:30 p.m. Eastern Daylight Time on October 1, 2015, to compete for program funds. To receive Program funds for the second application cycle, applications must be received in the USDA Rural Business-Cooperative Service, Energy Division no later than 4:30 p.m. Eastern Daylight Time on April 1, 2016. Any application received after 4:30 p.m. Eastern Daylight Time on April 1, 2016, will be considered for the subsequent application cycle for the Program.

Availability of Notice and Rule: This Notice and the interim rule for the Program are available on the USDA Rural Development Web site at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program* and at *http://www.rd.usda.gov/newsroom*.

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Program is to assist in the development of new and emerging technologies for the development of Advanced Biofuels, Renewable Chemicals, and Biobased Product Manufacturing. This is achieved through guarantees for loans made to fund the development, construction, and Retrofitting of Commercial Scale biorefineries using Eligible Technology and of Biobased Product Manufacturing facilities that use Technologically New Commercial Scale processing and manufacturing equipment and required facilities to convert Renewable Chemicals and other biobased outputs of biorefineries into end-user products on a Commercial Scale.

B. *Statutory Authority.* This Program is authorized under 7 U.S.C. 8103. Regulations are contained in 7 CFR part 4279, subpart C and in 7 CFR part 4287, subpart D.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4279.202 and 7 CFR 4287.302.

D. *Application Awards.* The Agency will review, evaluate, score, and award applications received in response to this Notice based on the provisions found in 7 CFR part 4279, subpart C and as indicated in this Notice.

II. Award Information

A. *Available Funds.* This Notice is a solicitation for applications that will be

funded using budget authority provided by the Agricultural Act of 2014 (2014 Farm Bill) and available under current law. Of the funds available, the 2014 Farm Bill provided for up to 15 percent of the mandatory funds for fiscal years 2014 and 2015 to promote Biobased Product Manufacturing.

B. *Type of Award.* Guaranteed loan.

D. *Guarantee Loan Funding.* The provisions of 7 CFR 4279.232 apply to this Notice. The Borrower needs to provide the remaining funds from other non-Federal sources to complete the Project.

E. *Guarantee and Annual Renewal Fees.* The guarantee and Annual Renewal Fees specified in 7 CFR 4279.231 are applicable to this Notice.

F. *Anticipated Award Date.* The award date will vary based on timing of completion of each Project's individual application process.

III. Eligibility Information

A. *Eligible Lenders.* To be eligible for this Program, Lenders must meet the eligibility requirements in 7 CFR 4279.208.

B. *Eligible Borrowers.* To be eligible for this Program, Borrowers must meet the eligibility requirements in 7 CFR 4279.209.

C. *Eligible Projects.* To be eligible for this Program, Projects must meet the eligibility requirements in 7 CFR 4279.210.

D. *Application Completeness.* Incomplete Phase 1 applications will be rejected and the Project will be given no further consideration. Lenders will be informed of the elements that made the application incomplete. If the Lender makes the required edits and resubmits the application to the USDA's Rural Business-Cooperative Service, Energy Division by 4:30 p.m. Eastern Daylight Time, on the closing date, the Agency will reconsider the application.

IV. Application Submission Information

A. *Letter of Intent.* For each guarantee request, the Lender or the Borrower must submit to the Agency a non-binding letter of intent to apply for a loan guarantee not less than 30 calendar days prior to the application deadline. The letter must conform to 7 CFR 4279.260. The purpose of the letter of intent is to notify the Agency approximately how many applications will need to be reviewed, so that Agency resources can be organized to adequately and expeditiously review all applications. The Agency reserves the right to request additional information from potential applicants. Applications that do not submit a letter of intent within 30 days of the application deadline will not be accepted by the Agency in that particular application cycle.

B. *Applications.* For each guarantee request, the Lender must submit to the Agency an application in conformance with 7 CFR 4279.261. Phase 1 applications will provide information to determine Lender, Borrower, and Project eligibility; preliminary economic and technical feasibility; and the priority score of the application. Based on the priority score ranking, the Agency will invite applicants whose Phase 1 applications receive higher priority scores to submit Phase 2 applications. Phase 2 application materials will be submitted as the Project planning and engineering is finalized and will include information such as: An environmental report, technical report, financial model, and the Lender's credit evaluation. The information required in both phases of the application process is detailed in the Agency's Application Guide.

C. *Content and Form of Submission.* All applicants must submit one paper copy of the application materials and an electronic copy containing the same information that is included in the paper copy. Detailed instructions regarding application submission are explained in the Application Guide that the Agency has developed. The Application Guide is available online at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program* or by contacting Todd Hubbell, Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov*.

D. *Application Submittal.* Application materials must be submitted to USDA Rural Business-Cooperative Service, Energy Division, Attention: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.

V. Biobased Product Manufacturing

This Notice also announces the solicitation of applications for funds available under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program to specifically fund Biobased Product Manufacturing. The 2014 Farm Bill added Biobased Product Manufacturing to the Program and provided for up to 15 percent of the mandatory funds for fiscal years 2014 and 2015 to be used to support facilities producing Biobased Products for end use. The 2014 Farm Bill provides the definition of ''Biobased Product Manufacturing,'' which the Agency has incorporated into the subsequent interim rule (see 7 CFR 4279.202). This definition requires that the Biobased Product Manufacturing facility use Renewable Chemicals and/or other biobased outputs of biorefineries as inputs and also requires that the Borrower use Technologically New Commercial Scale processing and manufacturing equipment and required facilities. The facility must produce end-user products.

A. *Biobased Product Manufacturing Eligibility Information.* The eligibility requirements for prospective Lenders and Borrowers are the same as those listed in Sections III.A and III.B of this Notice. For Biobased Product Manufacturing Projects, the Eligible Project requirement is modified to reflect that eligible Projects must use Technologically New Commercial Scale processing and manufacturing equipment and must convert Renewable Chemicals and other biobased outputs of biorefineries into end-user products on a Commercial Scale.

B. *Biobased Product Manufacturing Application Processing Procedures.* The application processing procedures for Biobased Product Manufacturing Projects as the same as identified in Section III.D and Section IV in this Notice.

C. *Biobased Product Manufacturing Scoring.* In lieu of the criteria listed in 7 CFR 4279.266, Biobased Product Manufacturing Projects will be scored using the criteria listed below:

(a) Whether the Borrower has established a market for the manufactured Biobased Product, as applicable. A maximum of 16 points can be awarded. Points to be awarded will be determined as follows:

(1) Degree of commitment of contracted sales agreements. A maximum of 6 points will be awarded.

(i) If the Borrower has signed contracts for purchase for greater than 50 percent of the dollar value of manufactured Biobased Product, 6 points will be awarded.

(ii) If the Borrower has signed letters of intent to enter into contracted sales agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of the manufactured Biobased Product, or combination of signed contracts or agreements and letters of intent or comparable documentation, 4 points will be awarded.

(iii) If the Borrower has signed letters of interest to enter into contracted sales agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of the manufactured Biobased

Product, or combination of signed contracts, letters of intent or comparable documentation, 2 points will be awarded.

(2) Duration of contracted sales agreements. A maximum of 6 points will be awarded.

(i) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of manufactured Biobased Product for the period not less than the loan term, 6 points will be awarded.

(ii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased Product for the period not less than 5 years but less than the term of the loan, 4 points will be awarded.

(iii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased Product for the period not less than 1 year but less than 5 years, 2 points will be awarded.

(3) Financial strength of the contracted sales agreement counterparty. A maximum of 4 points will be awarded.

(i) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased Product with a counterparty with a corporate credit rating not less than AA, Aa2, or equivalent, 4 points will be awarded.

(ii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased Product with a counterparty with a corporate credit rating less than AA, Aa2, or equivalent, but not less than A−, or A3, or equivalent, 2 points will be awarded.

(iii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased Product with a counterparty with a corporate credit rating less than A−, or A3, or equivalent, but not less than BBB−, or Baa3, or equivalent, 1 point will be awarded.

(b) Whether the area in which the Borrower proposes to place the Project, defined as the area that will supply the Renewable Chemicals and other biobased outputs of biorefineries to the proposed Project, has any other similar facilities. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the area that will supply the Renewable Chemicals and other biobased outputs of biorefineries to the proposed Project does not have any other similar facilities, 5 points will be awarded.

(2) If there are other similar facilities located within the area that will supply the Renewable Chemicals and other biobased outputs of biorefineries to the proposed Project, 0 points will be awarded.

(c) Whether the Borrower is proposing to use Renewable Chemicals and other biobased outputs of biorefineries not previously used in the Biobased Product Manufacturing. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower proposes to use Renewable Chemicals and other biobased outputs of biorefineries previously used in the manufacture of a Biobased Product in a commercial facility, 0 points will be awarded.

(2) If the Borrower proposes to use Renewable Chemicals and other biobased outputs of biorefineries not previously used in the manufacture of a Biobased Product in a commercial facility, 10 points will be awarded.

(d) Whether the Borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If at least 50 percent of the dollar value of Renewable Chemicals and other biobased outputs of biorefineries to be used by the proposed Project will be supplied by producer associations and cooperatives or biorefineries supplied by producer associations and cooperatives, 5 points will be awarded.

(2) If at least 30 percent of the dollar value of Renewable Chemicals and other biobased outputs of biorefineries to be used by the proposed Project will be supplied by producer associations and cooperatives or biorefineries supplied by producer associations and cooperatives, 3 points will be awarded.

(e) The level of financial participation by the Borrower, including support from non-Federal Government sources and private sources. A maximum of 20 points can be awarded. Points to be awarded will be determined as follows:

(1) If the sum of the loan amount requested and other direct Federal funding is less than or equal to 50 percent of total Eligible Project Costs, 20 points will be awarded.

(2) If the sum of the loan amount requested and other direct Federal funding is greater than 50 percent but less than or equal to 55 percent of total Eligible Project Costs, 16 points will be awarded.

(3) If the sum of the loan amount requested and other direct Federal funding is greater than 55 percent but less than or equal to 60 percent of total Eligible Project Costs, 12 points will be awarded.

(4) If the sum of the loan amount and other direct Federal funding is greater than 60 percent but less than or equal to 65 percent of total Eligible Project Costs, 8 points will be awarded.

(5) If the sum of the loan amount and other direct Federal funding is greater than 65 percent but less than or equal to 70 percent of total Eligible Project Costs, 4 points will be awarded.

(f) Whether the Borrower has established that the adoption of the manufacturing process proposed in the application will have a positive effect on three impact areas: Resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with an applicable renewable fuel standard, greenhouse gases, emissions, particulate matter). A maximum of 10 points can be awarded. Based on what the Borrower has provided in either the application or the Feasibility Study, points to be awarded will be determined as follows:

(1) If process adoption will have a positive impact on any one of the three impact areas (resource conservation, public health, or the environment), 3 points will be awarded.

(2) If process adoption will have a positive impact on two of the three impact areas, 6 points will be awarded.

(3) If process adoption will have a positive impact on all three impact areas, 10 points will be awarded.

(g) Whether the Borrower can establish that, if adopted, the technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use Renewable Chemicals and other biobased outputs of biorefineries. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower has failed to establish, through an independent third-party Feasibility Study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar Renewable Chemicals and other biobased outputs of biorefineries, 0 points will be awarded.

(2) If the Borrower has established, through an independent third-party Feasibility Study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use Renewable Chemicals and other biobased outputs of biorefineries, 5 points will be awarded.

(h) The potential for Rural economic development. A maximum of 10 points will be awarded. Points to be awarded will be determined as follows:

(1) If the Project is located in a Rural Area, 5 points will be awarded.

(2) If the Project creates jobs through direct employment with an average wage that exceeds the county median household wages where the Project will be located, 5 points will be awarded.

(i) The level of local ownership of the facility proposed in the application. For the purposes of this Notice, a Local Owner is defined as ''An individual who owns any portion of an eligible Advanced Biofuel Biorefinery and whose primary residence is located within 50 miles of the Biorefinery.'' A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(*1*) If Local Owners have an ownership interest in the facility of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(*2*) If Local Owners have an ownership interest in the facility of more than 50 percent, 5 points will be awarded.

(j) Whether the Project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Project can be commercially replicated regionally (*e.g.,* Northeast, Southwest, etc.), 5 points will be awarded.

(2) If the Project can be commercially replicated nationally, 10 points will be awarded.

(k) If the Project uses a particular technology, system, or process that is not currently operating at Commercial Scale as of October 1 of the fiscal year for which the funding is available (October 1, 2014 for the first application cycle which deadline is October 5, 2015, and as of October 1, 2015 for the applications submitted for cycles ending October 1, 2015 and April 1, 2016, 5 points will be awarded.

(l) The Administrator can award up to a maximum of 10 bonus points:

(1) To ensure, to the extent practical, there is diversity in the types of Projects approved for loan guarantees to ensure a wide a range as possible technologies, products, and approaches are assisted in the program portfolio; and

(2) To applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of Renewable Chemicals and other biobased outputs of biorefineries, so as to, as applicable, promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the Rural economy. No additional information regarding partnerships is detailed in this Notice.

VI. General Program Information

A. *Loan Origination.* Lenders seeking a loan guarantee under this Notice must comply with the all of the provisions found in 7 CFR 4279, subpart C.

B. *Loan Processing.* The Agency will process loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4279.260 through 4279.290.

C. *Evaluation of Applications and Awards.* Awards under this Notice will be made on a competitive basis; submission of an application neither reserves funding nor ensures funding. The Agency will evaluate each application received in the USDA Rural Business-Cooperative Service, Energy Division, select Phase 1 applications in accordance with 7 CFR 4279.267 to invite submittal of Phase 2 applications, and will make awards using the provisions specified in 7 CFR 4279.278.

D. *Guaranteed Loan Servicing.* The Agency will service loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4287.301 through 4287.399.

VII. Administration Information

A. *Notifications.* The Agency will notify, in writing, Lenders whose Phase 1 applications have scored highest and will invite them to submit Phase 2 applications. If the Agency determines it is unable to guarantee any particular loan, the Lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

B. *Administrative and National Policy Requirements.*

1. *Review or Appeal Rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4279.204.

2. *Exception Authority.* The provisions specified in 7 CFR 4279.203 and 7 CFR 4287.303 apply to this Notice.

C. *Environmental Review.* The Agency has reviewed the types of applicant proposals that may qualify for assistance under this section and has determined, in accordance with 7 CFR part 1940, subpart G, that all proposals shall be reviewed as a Class II Environmental Assessment. Furthermore, if after Agency review of proposals the Agency has determined that the proposal could result in significant environmental impacts on the quality of the human environment, an Environmental Impact Statement may be required pursuant to 7 CFR 1940.313. Environmental Assessments for Projects that score high enough will be submitted during the Phase 2 application process and must be conducted in accordance with 7 CFR part 1940, subpart G. Guidelines for preparing the Environmental Assessment are available by reviewing 7 CFR part 1940, subpart G and by reviewing the Application Guide, available on the Agency's Web site. *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program*. Applicants are reminded that this program is governed by 7 CFR part 1940, subpart G or successor regulation.

VIII. Agency Contacts

For general questions about this Notice, please contact Todd Hubbell, Rural Business–Cooperative Service, Energy Division, Biorefinery Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov*.

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 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: June 29, 2015.

Samuel Rikkers,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2015–16480 Filed 7–2–15; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–1A004]

Export Trade Certificate of Review

ACTION: Notice of application to amend the Export Trade Certificate of Review issued to DFA of California, Application no. 14–1A004.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2015). Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** summarizing the application. Under 15 CFR 325.6(a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary on the application.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any information not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 14–1A004.''

Summary of the Application

Applicant: DFA of California, 710 Striker Avenue, Sacramento, CA 95834.

Contact: Matthew Krehe, Senior Manager with Gilbert Associates, Inc., (916) 646–6464.

Application No.: 14–1A004.

Date Deemed Submitted: June 19, 2015.

Proposed Amendment: DFA of California (''DFA'') seeks to amend its Certificate to add the following six companies as Members of DFA's Certificate:

1. CAPEX (Corning, CA)
2. C R Crain and Sons, Inc. (Los Molinos, CA)
3. Fig Garden Packing, Inc. (Fresno, CA)
4. RPC Packing Inc. (Porterville, CA)
5. Sun-Maid Growers of California (Kingsburg, CA)
6. Taylor Brothers Farms, Inc. (Yuba City, CA)

DFA's proposed amendment of its Export Trade Certificate of Review would result in the following companies as Members under the Certificate:

1. Alpine Pacific Nut Company (Hughson, CA)
2. Andersen & Sons Shelling (Vina, CA)
3. Avanti Nut Company, Inc. (Stockton, CA)
4. Berberian Nut Company, LLC (Chico, CA)
5. CAPEX (Corning, CA)
6. Carriere Family Farms, Inc. (Glenn, CA)
7. Continente Nut LLC (Oakley, CA)
8. Crain Walnut Shelling, Inc. (Los Molinos, CA)
9. C R Crain and Sons, Inc. (Los Molinos, CA)
10. Crisp California Walnuts (Stratford, CA)
11. Diamond Foods, Inc. (Stockton, CA)
12. Empire Nut Company (Colusa, CA)
13. Fig Garden Packing, Inc. (Fresno, CA)
14. Gold River Orchards, Inc. (Escalon, CA)
15. Grower Direct Nut Company (Hughson, CA)
16. GSF Nut Company (Orosi, CA)
17. Guerra Nut Shelling Company (Hollister, CA)
18. Hill View Packing Company Inc. (Gustine, CA)
19. Linden Nut Company (Linden, CA)
20. Mariani Nut Company (Winters, CA)
21. Mariani Packing Company, Inc. (Vacaville, CA)
22. Mid Valley Nut Company Inc. (Hughson, CA)
23. National Raisin Company (Fowler, CA)
24. Poindexter Nut Company (Selma, CA)
25. Prima Noce Packing (Linden, CA)
26. RPC Packing Inc. (Porterville, CA)
27. Sacramento Packing, Inc. (Yuba City, CA)
28. Sacramento Valley Walnut Growers, Inc. (Yuba City, CA)
29. San Joaquin Figs, Inc. (Fresno, CA)
30. Shoei Foods USA, Inc. (Olivehurst, CA)
31. Stapleton-Spence Packing (Gridley, CA)
32. Sun-Maid Growers of California (Kingsburg, CA)
33. Sunsweet Growers Inc. (Yuba City, CA)
34. Taylor Brothers Farms, Inc. (Yuba City, CA)

35. T.M. Duche Nut Company, Inc. (Orland, CA)
36. Wilbur Packing Company, Inc. (Live Oak, CA)
37. Valley Fig Growers (Fresno, CA)

Dated: June 29, 2015.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2015–16474 Filed 7–2–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Brass Sheet and Strip From Italy; Final Results of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: On April 8, 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 brass sheet and strip (BSS) from Italy, covering the period of review (POR) March 1, 2013, through February 28, 2014.[1] This review covers one company, KME Italy SpA (KME Italy). The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). 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.*

DATES: *Effective Date:* July 6, 2015.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the antidumping duty order is brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Italy, which is currently classified under subheading 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS numbers are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2] The written description is dispositive.

Final Results of Review

As a result of our review, we determine that the following dumping margin on BSS from Italy exists for the period March 1, 2013, through February 28, 2014:

Exporter/manufacturer	Dumping margin (percent)
KME Italy SpA	22.00

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), 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. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of BSS from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for KME Italy SpA will be equal to the dumping margin established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will continue to be 5.44 percent, the all-others rate determined in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications 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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 26, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–16510 Filed 7–2–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Manufacturing Council: Meeting of the United States Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Manufacturing Council (Council) will hold the second meeting of the current members' term on Wednesday, July 22, 2015. The Council was established in April 2004 to advise the Secretary of

[1] *See Brass Sheet and Strip From Italy; Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 18808 (April 8, 2015) (*Preliminary Results*).

[2] *See Preliminary Results* and accompanying Decision Memorandum.

Commerce on matters relating to the U.S. manufacturing industry.

The purpose of the meeting is for the Workforce, Energy, Innovation, Research, & Development, and Tax, Trade, & Export Growth subcommittees to provide relevant updates on their fact finding efforts to the Council as the subcommittees work towards drafting recommendations for consideration by the Manufacturing Council. The Council will also receive briefings from various senior officials across the Department on international trade policy, Manufacturing Day, and Industry & Analysis policy updates. The Council members will follow-up from the Council's initial meeting to discuss their views on major priorities facing the manufacturing industry and issues that they propose for the Council to advise on during their appointment term. The agenda may change to accommodate Council business. The final agenda will be posted on the Department of Commerce Web site for the Council at *http://trade.gov/manufacturingcouncil,* at least one week in advance of the meeting.

DATES: Wednesday, July 22, 2015, 1:00 p.m.–4:00 p.m. The deadline for members of the public to register, including requests to make comments during the meetings and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on July 15, 2015.

ADDRESS: The meeting will be held at the U.S. Department of Commerce, Room 3407, 1401 Constitution Avenue NW., Washington, DC 20230. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Manufacturing Council, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *archana.sahgal@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Archana Sahgal, the United States Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *archana.sahgal@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council advises the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

Public Participation: The meeting will be open to the public and will be physically accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATES caption. The meeting room will be provided upon registration. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation or other auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration along with a brief statement of the general nature of the comments, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the members of the Manufacturing Council and to the public at the meeting.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Archana Sahgal at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on July 15, 2015, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: June 29, 2015.

Archana Sahgal,

Executive Secretary, United States Manufacturing Council.

[FR Doc. 2015–16374 Filed 7–2–15; 8:45 am]

BILLING CODE 3510–DR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a modification to a currently approved public information collection request (ICR) entitled Senior Corps Grant Application for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Tamika Becton, at (202) 606–6644 or email to *tbecton@cns.gov* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.,* permitting electronic submissions of responses.

Comments

The 60-day *Notice* soliciting comments was published on December

10, 2014 on pate 73280. No public comments were received.

Description: CNCS is seeking approval of the Senior Corps Grant Application, as revised. The Grant Application is used by RSVP, Foster Grandparent and Senior Companion Program grantees, and for potential applicants. The Senior Corps Grant Application is currently approved through September 30, 2016.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: Senior Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: None.

Affected Public: Current and potential grantees of the RSVP, Foster Grandparent, and Senior Companion programs.

Total Respondents: 1,519.

Frequency: Annual.

Average Time per Response: 5 hours.

Estimated Total Burden Hours: 7,595.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: June 29, 2015.

Erwin J. Tan,

Director, Senior Corps.

[FR Doc. 2015–16491 Filed 7–2–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Exclusive Patent License

AGENCY: Department of the Air Force, Air Force Research Laboratory Information Directorate, Rome, New York.

ACTION: Notice of intent to issue a partially exclusive patent license.

SUMMARY: Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Synerji, LLC, a corporation of Delaware, having a place of business at 106 Genesee St., Utica, New York 13501 a partially exclusive license in any right, title and interest the United States Air Force has in: U.S. Patent Application No. 13/573,899, filed on December 17, 2012 entitled ''Method for Context Aware Text Recognition.''

FOR FURTHER INFORMATION CONTACT: An exclusive license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objections should be sent to: Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Telephone: (315) 330–2087; Facsimile (315) 330–7583.

Henry Williams,

Civ, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2015–16468 Filed 7–2–15; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0055]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Child Care Access Means Parents in School Program Annual Performance Report

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

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 August 5, 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–0055 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 Josephine Hamilton, 202–502–7583.

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: Child Care Access Means Parents in School Program Annual Performance Report.

OMB Control Number: 1840–0763.

Type of Review: A revision of an existing information collection..

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 89.

Total Estimated Number of Annual Burden Hours: 801.

Abstract: This is a revision of the Child Care Access Means Parent In School Program (CCAMPIS) Annual Performance Report (APR). This report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements in accordance with the program authorizing statute. The data collected is aggregated to provide national information on project participants and the results demonstrated by program outcomes. The burden hours are increased due to additional queries that have been added to the APR that capture more specific data needed to enhance the understanding of results demonstrated by this program in accordance with OMB mandates.

Dated: June 30, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–16450 Filed 7–2–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Waiver and Extension of the Project Period; Native American Career and Technical Education Program

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Final waiver and extension of the project period.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.101A.]

SUMMARY: For the 24-month projects funded in fiscal year (FY) 2013 under the Native American Career and Technical Education Program (NACTEP), the Secretary waives the requirements that generally prohibit project period extensions involving the obligation of additional Federal funds. The Secretary also extends the project periods of these grants for up to an additional 24 months. This enables the current NACTEP grantees to request and continue to receive Federal funding annually in FY 2015 and FY 2016 for project periods through FY 2016 and possibly through FY 2017.

DATES: The waiver and extension of the project period is effective July 6, 2015.

FOR FURTHER INFORMATION CONTACT: Gwen Washington, U.S. Department of Education, 400 Maryland Avenue SW., Room 11076, Potomac Center Plaza (PCP), Washington, DC 20202–7241. Telephone: (202) 245–7790, or by email: *gwen.washington@ed.gov*. Or Linda Mayo, U.S. Department of Education, 400 Maryland Avenue SW., Room 11075, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7792, or by email: *linda.mayo@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 10, 2015, we published in the **Federal Register** (80 FR 7440) a proposed waiver of 34 CFR 75.261(a) and (c)(2) and extension of the project period (proposed waiver and extension) in order to—

(1) Enable the Secretary to provide additional funds to the current NACTEP grantees with FY 2015 funds and possibly FY 2016 funds for project periods through FY 2016 and possibly through FY 2017; and

(2) Request comments on the proposed waiver and extension.

There are no substantive differences between the proposed waiver and extension and the final waiver and extension.

Public Comment: In response to our invitation in the proposed waiver and extension, we received 22 comments. Generally, we do not address comments that raise concerns not related to the proposed waiver and extension.

Analysis of Comments and Discussion

An analysis of the comments received in response to the proposed waiver and extension follows.

Comments: The 22 comments we received supported the proposed waiver and extension of the NACTEP project period. We heard from a variety of commenters, including tribal community college presidents, deans and administrators, teachers, students, and project evaluators. Several commenters provided a variety of reasons for their support of the waiver and extension, including: the effectiveness of work being done by current grantees, the number of students served and placed in employment under current projects, and the great need for NACTEP projects to continue in the Native American and Alaska communities served by current projects.

Several commenters stated that it would be difficult for eligible entities to prepare NACTEP applications for short-term funding prior to the expected reauthorization of the Carl D. Perkins Career and Technical Education Act of 2006 (the Perkins Act). Some commenters stated that it was not in the public interest to conduct a NACTEP grant competition at this time because there are likely to be changes in the Perkins Act for NACTEP beyond FY 2015.

Several commenters expressed the view that the waiver and extension are necessary to allow current students sufficient time to complete their programs, which include programs awarding industry-recognized credentials, two-year certificates, and associate degrees.

One commenter noted that tribal colleges would not have sufficient time to plan, establish, or effectively operate viable programs, in a one-year timeframe. The commenter expressed the view that continuing the projects of current grantees would eliminate the difficulties, barriers, and inefficiencies associated with starting new programs, stating that extending the current project period and funding of current grantees would: Capitalize upon the current momentum of grantee service delivery, since service streams were already in place and operational; allow current grantees to modify their programs based on their experience to date without disruption to the projects' participants, partnerships, programs, or plans; and increase the likelihood of student attainment of associate degrees and certificates and subsequent job placement. The commenter further stated that, under NACTEP, grantees must evaluate the long-term impact of each project, which will be facilitated by extending the project duration beyond two years.

Another commenter noted that a lapse of funds would create a set-back in the progress made in cultivating successful relationships with the local community college to provide in-demand training within their Native American community.

A commenter provided examples of exemplary NACTEP programs that are making substantial gains in combating poverty and unemployment, long-term joblessness, and other problems that contribute to the lack of gainful employment. The commenter stated that the grantees have partnered with local community colleges to provide students opportunities to earn college credits, as well as State and national certifications that prepare students for employment. This commenter expressed the need for the Department to approve the NACTEP waiver and extension for current grantees.

Discussion: We appreciate the commenters' support and agree that extending the current NACTEP grant period will allow current NACTEP grantees to continue to work towards accomplishing the goals and objectives stated in their 2013 NACTEP applications, including providing specialized career and technical education programs to Native American students. We agree that it is important that there not be a lapse in the programming provided by NACTEP grantees to students.

Changes: None.

Background

NACTEP, as authorized by section 116(a) through (g) of the Perkins Act, supports grants to federally recognized Indian tribes, tribal organizations, Alaska Native entities and eligible Bureau of Indian Education-funded schools to improve career and technical education programs that benefit Native Americans and Alaskan Natives.

On February 26, 2013, we published in the **Federal Register** (78 FR 13030) a notice inviting applications for NACTEP

grants (2013 NIA). Although in previous NACTEP competitions the Secretary invited applications with a proposed project period of five years, in anticipation of congressional reauthorization of the Perkins Act, in the FY 2013 competition, the Department invited applications with proposed project periods of only two years. The project period for the current 31 NACTEP grantees is scheduled to end in FY 2015.

Because there is the potential for changes in the Perkins Act for NACTEP beyond FY 2015, we do not believe it is in the public interest to hold a new NACTEP competition in FY 2015 for projects that may then operate for just one year, or to announce a competition under which eligible entities would be expected to proceed through the application preparation and submission process while lacking critical information about the future of the program. Further, we do not think that it is in the public interest to have a lapse in the services currently provided by the NACTEP grantees.

For these reasons, the Secretary waives the requirements of 34 CFR 75.261(a) and (c)(2) that generally prohibit project extensions involving the obligation of additional Federal funds and extends the NACTEP project periods for up to 24 months. The waiver and extension will allow the current NACTEP grantees to request and continue to receive Federal funding annually for project periods through FY 2016 and possibly through FY 2017. We will fund the extended project period by using funds appropriated for FY 2015 or FY 2016, depending on whether the grants are extended for one or two years.

Any activities carried out during the period of a NACTEP continuation award will have to be consistent with, or a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the FY 2013 NACTEP competition. The requirements applicable to continuation awards for this competition set forth in the 2013 NIA and the requirements in 34 CFR 75.253 will apply to any continuation awards sought by the current NACTEP grantees. We will base our decisions regarding continuation awards on the program narratives, budgets, budget narratives, and program performance reports submitted by the current grantees, and the requirements in 34 CFR 75.253.

The waiver and extension will not exempt the current NACTEP grantees from the appropriation account closing provisions of 31 U.S.C. 1552(a), nor will they extend the availability of funds previously awarded to current NACTEP grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Department of the Treasury and is unavailable for restoration for any purpose (31 U.S.C. 1552(b)).

Regulatory Flexibility Act Certification

The Secretary certifies that the waiver and extension and the activities required to support two additional years of NACTEP funding will not have a significant economic impact on a substantial number of small entities. The small entities that will be affected by the waiver and extension are the 31 currently-funded NACTEP grantees and any other potential applicants.

The Secretary certifies that the waiver and extension will not have a significant economic impact on these entities because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional years of funding will not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This waiver and extension does not contain any information collection requirements.

Intergovernmental Review

NACTEP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to either of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 2326(a) through (g).

Dated: June 30, 2015.

Johan E. Uvin,

Acting Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2015–16496 Filed 7–2–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ15–15–000]

Orlando Utilities Commission; Notice of Filing

Take notice that on June 8, 2015, Orlando Utilities Commission submitted tariff filing per 35.28(e): Further Regional Compliance Filing to be effective 1/1/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 9, 2015.

Dated: June 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–16438 Filed 7–2–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–159–000.

Applicants: Arizona Public Service Company.

Description: Section 203 Application of Arizona Public Service Company requesting authorization for the acquisition of El Paso Electric's ownership interests in Four Corners Power Plant.

Filed Date: 6/26/15.

Accession Number: 20150626–5326.

Comments Due: 5 p.m. ET 7/17/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2265–006; ER14–1818–006; ER14–1679–003; ER14–1678–003; ER14–1677–003; ER14–1676–003; ER14–1675–003; ER14–1674–003; ER14–1673–003; ER14–1672–003; ER14–1671–003; ER14–1670–003; ER14–1669–003; ER14–1668–003; ER13–1965–009; ER12–261–014; ER12–2413–010; ER11–4308–015; ER11–4307–015; ER11–2805–014; ER11–2508–014; ER11–2108–006; ER11–2107–006; ER11–2062–015; ER10–2931–012; ER10–2888–015; ER10–2876–012; ER10–2792–012; ER10–2791–012; ER10–2360–005; ER10–2356–005; ER10–2352–005; ER10–2351–005; ER10–2350–005; ER10–2347–005; ER10–2340–008; ER10–2339–008; ER10–2338–008; ER10–2336–005; ER10–2335–005; ER10–2333–005; ER10–1575–010; ER10–1291–016.

Applicants: NRG Power Marketing LLC, Bayou Cove Peaking Power, LLC, Bendwind, LLC, Big Cajun I Peaking Power LLC, Boston Energy Trading and Marketing LLC, Community Wind North 1 LLC, Community Wind North 2 LLC, Community Wind North 3 LLC, Community Wind North 5 LLC, Community Wind North 6 LLC, Community Wind North 7 LLC, Community Wind North 8 LLC, Community Wind North 9 LLC, Community Wind North 10 LLC, Community Wind North 11 LLC, Community Wind North 13 LLC, Community Wind North 15 LLC, Cottonwood Energy Company LP, CP Power Sales Seventeen, L.L.C., CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C., DeGreeff DP, LLC, DeGreeffpa, LLC, Energy Alternatives Wholesale, LLC, Energy Plus Holdings LLC, GenConn Energy LLC, GenOn Energy Management, LLC, Green Mountain Energy Company, Groen Wind, LLC, Hillcrest Wind, LLC, Independence Energy Group LLC, Jeffers Wind 20, LLC, Larswind, LLC, Louisiana Generating LLC, North Community Turbines LLC, North Wind Turbines LLC, Norwalk Power LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, Reliant Energy Northeast LLC, RRI Energy Services, LLC, Sierra Wind, LLC, TAIR Windfarm, LLC.

Description: Updated Market Power Analysis for the Central region of NRG MBR Sellers.

Filed Date: 6/26/15.

Accession Number: 20150626–5329.

Comments Due: 5 p.m. ET 8/25/15.

Docket Numbers: ER10–3042–004.

Applicants: Combined Locks Energy Center, LLC.

Description: Triennial Market-Based Rate Update of Combined Locks Energy Center, LLC.

Filed Date: 6/26/15.

Accession Number: 20150626–5331.

Comments Due: 5 p.m. ET 8/25/15.

Docket Numbers: ER11–1850–006; ER13–1192–003; ER11–1847–006; ER11–1846–006; ER11–1848–006; ER14–1360–002; ER11–2598–009; ER11–2516–006; ER12–1153–006; ER12–1152–006.

Applicants: Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Energy America LLC, Energetix DE, LLC, Gateway Energy Services Corporation, NYSEG Solutions, LLC, Bounce Energy NY, LLC, Bounce Energy PA, LLC.

Description: Notice of Non-Material Change in Status of the Direct Energy Sellers.

Filed Date: 6/26/15.

Accession Number: 20150626–5332.

Comments Due: 5 p.m. ET 7/17/15.

Docket Numbers: ER11–3736–002.

Applicants: Pocahontas Prairie Wind, LLC.

Description: Updated Market Power Analysis for Central Region of Pocahontas Prairie Wind, LLC.

Filed Date: 6/29/15.

Accession Number: 20150629–5179.

Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER11–4633–003.

Applicants: Madison Gas & Electric Company.

Description: Triennial Market Based Rate filing of Madison Gas & Electric Company under ER11–4633.

Filed Date: 6/29/15.

Accession Number: 20150629–5172.

Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER13–823–004; ER15–1348–002; ER12–1561–003; ER10–2481–003; ER13–33–003.

Applicants: Castleton Commodities Merchant Trading L.P., Roseton Generating LLC, CCI Rensselaer LLC, Ingenco Wholesale Power, L.L.C., Collegiate Clean Energy, LLC.

Description: Notice of change in status of the CCI MBR Sellers.

Filed Date: 6/26/15.

Accession Number: 20150626–5316.

Comments Due: 5 p.m. ET 7/17/15.

Docket Numbers: ER15–258–001.

Applicants: DATC Path 15, LLC.

Description: Compliance filing: Compliance to 3000000 to be effective 5/17/2014.

Filed Date: 6/26/15.

Accession Number: 20150626–5247.

Comments Due: 5 p.m. ET 7/17/15.

Docket Numbers: ER15–960–001.

Applicants: CPV Biomass Holdings, LLC, CPV Keenan II Renewable Energy Company, LLC, CPV Maryland, LLC, CPV Shore, LLC, Benson Power, LLC.

Description: Notice of Change in Status of CPV Biomass Holdings, LLC, et al.

Filed Date: 6/26/15.

Accession Number: 20150626–5317.

Comments Due: 5 p.m. ET 7/17/15.

Docket Numbers: ER15–1334–001.

Applicants: Tucson Electric Power Company.

Description: Tariff Amendment: Response to Deficiency Letter Dated May 14, 2015 to be effective 2/17/2015.

Filed Date: 6/29/15.

Accession Number: 20150629–5126.

Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: ER15–1705–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: Burlingon Request for Deferral of Action to be effective 10/1/2014.

Filed Date: 6/26/15.

Accession Number: 20150626–5231.

Comments Due: 5 p.m. ET 7/17/15.

Docket Numbers: ER15–1828–000; ER15–1829–000; ER15–1830–000.

Applicants: Fenton Power Partners I, LLC.

Description: Clarification to June 1, 2015 Fenton Power Partners I, LLC, et al. tariff filings.

Filed Date: 6/26/15.
Accession Number: 20150626–5303.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2028–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Corn Belt Power Cooperative Formula Rate to be effective 10/1/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5225.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2029–000.
Applicants: Exelon New Boston, LLC.
Description: § 205(d) Rate Filing: Exelon MBR Tariff Changes to be effective 6/29/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5233.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2030–000.
Applicants: Exelon West Medway, LLC.
Description: § 205(d) Rate Filing: Exelon MBR Tariff Changes to be effective 6/29/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5236.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2031–000.
Applicants: Exelon Wind 4, LLC.
Description: § 205(d) Rate Filing: Exelon MBR Tariff Changes to be effective 6/29/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5240.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2032–000.
Applicants: Handsome Lake Energy, LLC.
Description: § 205(d) Rate Filing: Exelon MBR Tariff Changes to be effective 6/29/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5242.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2033–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2015–06–26_SA 2808 Ameren Illinois-Marathon Petroleum Construction Agreement to be effective 5/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5243.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2034–000.
Applicants: Bayonne Plant Holding, L.L.C.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5245.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2035–000.
Applicants: Brandon Shores LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5246.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2036–000.
Applicants: C.P. Crane LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5248.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2037–000.
Applicants: Virginia Electric and Power Company.
Description: § 205(d) Rate Filing: Rate Schedule 102—Amendment to Schedule A to be effective 6/7/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5249.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2038–000.
Applicants: Duke Energy Florida, Inc.
Description: Tariff Cancellation: Termination of Rate Schedule No. 150 Intercession City to be effective 5/21/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5250.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2039–000.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2015–06–26 Petition for Limited Tariff Waiver of Section 27.10 to be effective N/A.
Filed Date: 6/26/15.
Accession Number: 20150626–5251.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2040–000.
Applicants: Camden Plant Holding, L.L.C.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5252.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2041–000.
Applicants: Dartmouth Power Associates Limited Partnership.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5253.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2042–000.
Applicants: Elmwood Park Power, LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5254.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2043–000.
Applicants: H.A. Wagner LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5255.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2044–000.
Applicants: Newark Bay Cogeneration Partnership, L.P.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5256.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2045–000.
Applicants: Pedricktown Cogeneration Company LP.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5258.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2046–000.
Applicants: Raven Power Marketing LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5259.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2047–000.
Applicants: Sapphire Power Marketing LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5260.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2048–000.
Applicants: York Generation Company LLC.
Description: § 205(d) Rate Filing: MBR Revisions to be effective 6/27/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5262.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2049–000.
Applicants: DATC Path 15, LLC.
Description: § 205(d) Rate Filing: Compliance to be effective 5/17/2014.
Filed Date: 6/26/15.
Accession Number: 20150626–5268.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2050–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2015–06–26_Revision to NRIS Definition Filing to be effective 8/1/2015.
Filed Date: 6/26/15.
Accession Number: 20150626–5269.
Comments Due: 5 p.m. ET 7/17/15.
Docket Numbers: ER15–2051–000.
Applicants: Whiting Clean Energy, Inc.
Description: § 205(d) Rate Filing: Proposed Revisions to Market-Based Rate Tariff to be effective 8/29/2015.
Filed Date: 6/29/15.

Accession Number: 20150629–5067.
Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: ER15–2052–000.
Applicants: Occidental Power Marketing, L.P.
Description: Market-Based Triennial Review Filing: Updated Market Power Analysis to be effective 6/30/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5079.
Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER15–2053–000.
Applicants: Occidental Power Services, Inc.
Description: Market-Based Triennial Review Filing: Updated Market Power Analysis to be effective 6/30/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5081.
Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER15–2054–000.
Applicants: Occidental Chemical Corporation.
Description: Market-Based Triennial Review Filing: Updated Market Power Analysis to be effective 6/30/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5082.
Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER15–2055–000.
Applicants: Combined Locks Energy Center, LLC.
Description: Market-Based Triennial Review Filing: IEG Triennial MBR Update in Docket Nos. ER10–1894, 1882, 3036 and 3042 to be effective 8/25/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5140.
Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER15–2056–000.
Applicants: Upper Peninsula Power Company.
Description: Market-Based Triennial Review Filing: UPPCo Triennial MBR Update and Request for Category 1 Seller Status to be effective 8/28/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5151.
Comments Due: 5 p.m. ET 8/28/15.

Docket Numbers: ER15–2057–000.
Applicants: Tanner Street Generation, LLC.
Description: § 205(d) Rate Filing: CIS with Cat 1 Seller Request re NE to be effective 6/30/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5171.
Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: ER15–2058–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised Service Agreement No. 1570; Queue No. Z2–029 to be effective 5/29/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5205.
Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: ER15–2059–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 filing re: Public Policy Transmission Planning Process to be effective 8/28/2015.
Filed Date: 6/29/15.
Accession Number: 20150629–5223.
Comments Due: 5 p.m. ET 7/20/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–16437 Filed 7–2–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9930–06–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club and California Communities Against Toxics (collectively ''Plaintiffs''): *Sierra Club, et al.* v. *EPA,* No. 13–1639 (D. DC). In this lawsuit, Plaintiffs allege that EPA has failed to review, and revise if necessary, the national emission standards for hazardous air pollutants (''NESHAP'') for publicly owned treatment works (''POTWs'') within eight years of initial promulgation. They also allege that EPA failed to promulgate ''residual risk'' standards for POTWs or to determine that residual risk standards for POTWs are not necessary within eight years of initial promulgation of the NESHAP. The proposed consent decree establishes deadlines for EPA to take proposed and final action for meeting EPA's obligations under the applicable CAA provisions.

DATES: Written comments on the proposed consent decree must be received by *August 5, 2015.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2015–0430, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Scott Jordan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–7508; email address: *jordan.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Under sections 112(d)(6) and 112(f)(2) of the CAA, EPA has a mandatory duty to take actions relative to the review/revision of national emission standards for hazardous air pollutants (''NESHAP'') within eight years of the issuance of such standards. The proposed consent decree would resolve a deadline suit filed by Plaintiffs alleging EPA's failure to take the above actions within eight years of issuing the NESHAP for the POTW source category (40 CFR part 63, subpart VVV). The proposed consent decree establishes that EPA will propose action by December 8, 2016 and take final action by October 16, 2017. See the proposed consent decree for further details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed

consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2015–0430) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, information that is claimed as confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov*, your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 25, 2015.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2015–16511 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–60–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Kansas' request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective August 5, 2015 for the State of Kansas' National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on July 6, 2015 for the State of Kansas' other authorized programs.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient

legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 4, 2010, the Kansas Department of Health and Environment (KDHE) submitted an application titled ''Department of Health and Environment Enterprise System'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed KDHE's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Kansas' request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 51, 70–71, 122, 141, 144, 146, 257, 258, 262, 264–266, 268, 270, 403, 412, and 437, is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans;
Part 70—State Operating Permit Programs;
Part 71—Federal Operating Permit Programs;
Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;
Part 142—National Primary Drinking Water Regulations Implementation;
Part 145—State Underground Injection Control Programs;
Part 239—Requirements for State Permit Program Determination of Adequacy;
Part 272—Approved State Hazardous Waste Management Programs;
Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution; and
Part 437—The Centralized Waste Treatment Point Source Category.

KDHE was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in this notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Kansas' request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Kansas' request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–16314 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9930–07–Region–3]

Delegation of Authority to the Commonwealth of Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On May 7, 2015, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public of Virginia's updated delegation of authority to implement and enforce NESHAP and NSPS, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On May 7, 2015, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by email at *chalmers.ray@epa.gov*.

SUPPLEMENTARY INFORMATION: On March 12, 2015, Virginia notified EPA that Virginia had updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2014. On May 7, 2015, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAP and NSPS as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

''Michael G. Dowd, Director, Air Division, Virginia Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of

Virginia (Virginia) the authority to implement and enforce various federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 CFR parts 60, 61 and 63.[1] In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated March 12, 2015, Virginia informed EPA that Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2014. Virginia noted that its intent in updating its incorporation by reference of the NESHAP and NSPS was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

Virginia provided copies of its revised regulations specifying the NESHAP and NSPS which Virginia has adopted by reference. These revised regulations are entitled 9 VAC 5–50 ''New and Modified Stationary Sources,'' and 9 VAC 5–60 ''Hazardous Air Pollutant Sources.'' These revised regulations have an effective date of March 11, 2015.

Accordingly, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5–50 and 9 VAC 5–60, both effective on March 11, 2015.

Please note that on December 19, 2008, in *Sierra Club* v. *EPA*,[2] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

[1] EPA has posted copies of these actions at: *http://www.epa.gov/reg3artd/airregulations/delegate/vadelegation.htm.*

[2] *Sierra Club* v. *EPA*, 551 F.3rd 1019 (D.C. Cir. 2008).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR part 63. Because Virginia incorporated 40 CFR part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR part 63 due to the Court's ruling in *Sierra Club* v. *EPA.*

EPA appreciates Virginia's continuing NESHAP and NSPS enforcement efforts, and also Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

Sincerely,

Diana Esher,

Director, Air Protection Division

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: June 18, 2015.

Diana Esher,

Director, Air Protection Division, Region III.

[FR Doc. 2015–16516 Filed 7–2–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *The Old Fort Banking Company Employee Stock Ownership Plan and Trust,* Old Fort, Ohio; to become a bank holding company by acquiring 45 percent of the voting shares of Gillmor Financial Services, Inc., and thereby indirectly acquire voting shares of The Old Fort Banking Company, both in Old Fort, Ohio.

Board of Governors of the Federal Reserve System, June 30, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–16467 Filed 7–2–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Home Bancorp, Inc.,* Lafayette, Louisiana; to acquire Louisiana Bancorp, Inc., Metairie, Louisiana, and indirectly acquire Bank of New Orleans, Metairie, Louisiana, a federal savings association, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, June 30, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–16466 Filed 7–2–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of Certification of Maintenance of Effort on Help America Vote Act, Public Law 107–252, Title II, Subtitle D, Section 291, Payments for Protection and Advocacy Systems (P&A Voting Access Narrative Annual Report)

AGENCY: Administration on Intellectual and Developmental Disabilities, Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Help America Vote Act (HAVA), Public Law 107–252, Title II, Subtitle D, Section 291, Payments for Protection and Advocacy Systems (P&A Voting Access Narrative Annual Report).

DATES: Submit written comments on the collection of information by August 5, 2015.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Melvenia Wright, Program Specialist, Administration for Community Living, Washington, DC 20001. Telephone: (202) 357–3486; email *melvenia.wright@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The Protection and Advocacy Voting Access Annual Narrative Report from the Protection and Advocacy Systems is required by federal statute and regulation, the Help America Vote Act (HAVA), Public Law 107–252, Title II, Subtitle D, Section 291, Payments for Protection and Advocacy to Assure Access for Individuals with Disabilities (42 U.S.C. 15461). The report is provided in writing to the Administration for Community Living, Administration on Intellectual and Developmental Disabilities (AIDD). Each eligible Protection and Advocacy System (P&As) must prepare and submit an annual report at the end of every fiscal year by the 31st of December. The report addresses the activities conducted with the funds provided during the year. The information collected from the annual report will be aggregated into an annual profile of how the P&As have utilized the funds and review the P&As activities carried out for each of the seven mandated area. These areas include full participation in the electoral process; education, training and assistance; advocacy and education around HAVA implementation efforts; training and education of election officials, poll workers and election volunteers regarding the rights of voters with disabilities and best practices; assistance in filing complaints; assistance to State and other governmental entities regarding the physical accessibility of polling places; and obtaining training and technical assistance on voting issues. The PAVA annual narrative report will also provide an overview of the goals and accomplishments for each P&A as well as permit the Administration on Intellectual and Developmental Disabilities (AIDD) to track voting progress to monitor grant activities and create the bi-annual report to Congress. ACL estimates the burden of this collection of information as follows: 55 Protection and Advocacy Systems (P&A) respond annually which should be an average burden of 20 hours per State per year or a total of 1,100 hours for all states annually.

Dated: June 29, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–16492 Filed 7–2–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

DATES: Monday, August 3, 2015 from 9:00 a.m. to 4:30 p.m.; and Tuesday, August 4, 2015 from 9:30 a.m. to 4:00 p.m. These meetings will be open to the general public.

ADDRESSES: These meetings will be held in the U.S. Department of Health and Human Services/*Hubert H. Humphrey Building* located at 200 Independence Avenue SW., *Conference Room 800,* Washington, DC 20201.

Individuals who would like to participate via conference call may do so by dialing toll-free 888–469–0957, when prompted enter pass code: 8955387. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Dr. MJ Karimi, PCPID Team Lead, via email at *MJ.Karimie@acl.hhs.gov,* or via telephone at 202–357–3588, no later than Monday, July 27, 2015. The PCPID will attempt to accommodate requests made after this date, but cannot guarantee the ability to grant requests received after the deadline. All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA) and the Federal Advisory Committee Act (FACA).

Agenda: The Committee Members will discuss, finalize and approve the 2015 PCPID Report to the President. They will also begin exploring the topics for the next PCPID Report to the President.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Dr. MJ Karimi, Team Lead, President's Committee for People with Intellectual Disabilities, One Massachusetts Avenue NW., Room 4206, Washington, DC 20201. Telephone: 202–357–3588. Fax: 202–205–8037. Email: *MJ.Karimie@acl.hhs.gov*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID executive order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: June 24, 2015.

Aaron Bishop,

Commissioner, Administration on Intellectual and Developmental Disabilities (AIDD).

[FR Doc. 2015–16488 Filed 7–2–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2270]

The Drug Supply Chain Security Act Implementation: Product Tracing Requirements for Dispensers—Compliance Policy; Guidance for Industry, Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''DSCSA Implementation: Product Tracing Requirements for Dispensers—Compliance Policy.'' This guidance announces FDA's intention with regard to enforcement of certain product tracing requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) added by the Drug Supply Chain Security Act (DSCSA). FDA does not intend to take action against dispensers who, prior to November 1, 2015, accept ownership of product without receiving product tracing information, prior to or at the time of a transaction or do not capture and maintain the product tracing information, as required by the FD&C Act.

DATES: Effective July 1, 2015. For information about enforcement dates, please see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2015–D–2270, and should be directed to the office listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''DSCSA Implementation: Product Tracing Requirements for Dispensers—Compliance Policy.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). We made this determination because this guidance document provides information pertaining to statutory requirements that take effect on July 1, 2015, regarding the provisions to provide and capture product tracing information under section 582(d)(1) of the FD&C Act (21 U.S.C 360eee–1(d)(1)). It is important that FDA provide this information before that date. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's good guidance practices (21 CFR 10.115(g)(3)).

On November 27, 2013, the DSCSA (Title II of Pub. L. 113–54) was signed into law. Section 202 of DSCSA adds sections 581 and 582 to the FD&C Act, which set forth new definitions and requirements for the tracing of products through the pharmaceutical distribution supply chain. Starting in 2015, trading partners (manufacturers, wholesale distributors, dispensers, and repackagers) are required under sections 582(b)(1), (c)(1), (d)(1), and (e)(1) of the FD&C Act to exchange product tracing information when engaging in transactions involving certain prescription drugs. For dispensers, requirements for the tracing of products through the pharmaceutical distribution supply chain under section 582(d)(1) of the FD&C Act go into effect on July 1, 2015.

Some dispensers have expressed concern that electronic systems used to exchange, capture, and maintain product tracing information will not be operational by this effective date. Although the DSCSA allows product tracing information to be exchanged through paper in certain circumstances, FDA understands that many dispensers intend to utilize electronic systems to capture and maintain product tracing information. Thus, FDA recognizes that some dispensers may need additional time beyond July 1, 2015, to work with trading partners to ensure that the product tracing information required by section 582 is captured and maintained by dispensers. In light of these concerns, FDA does not intend to take action against dispensers who, prior to November 1, 2015: (1) Accept ownership of product without receiving product tracing information, prior to or at the time of a transaction, as required by section 582(d)(1)(A)(i) of the FD&C Act or (2) do not capture and maintain the product tracing information, as required by section 582(d)(1)(A)(iii) of the FD&C Act. This compliance policy does not extend to other requirements of the FD&C Act applicable to dispensers and other trading partners, including

those in section 582, such as verification related to suspect and illegitimate product (including quarantine, investigation, notification and recordkeeping) and requirements related to engaging in transactions only with authorized trading partners. The guidance document explains the scope of the compliance policy in further detail.

The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify all comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: June 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–16401 Filed 7–2–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the July meeting, the Advisory Council will hear from experts on related dementias, such as Frontotemporal dementia, Lewy Body dementia, and others. Following this session, the Advisory Council will also hold a discussion of the expected bypass budget from NIA, required in the CRomnibus Bill. The Council will also discuss updates to international events on dementia.

DATES: The meeting will be held on April 28th, 2015 from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held in the Great Hall in the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments: Time is allocated in the afternoon on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''July 27 Meeting Attendance'' in the Subject line by Friday, July 17, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

Topics of the Meeting: The Advisory Council will hear from experts on related dementias, such as Frontotemporal dementia, Lewy Body dementia, and others. Following this session, the Advisory Council will also hold a discussion of the expected bypass budget from NIA, required in the CRomnibus Bill. The Council will also discuss updates to international events on dementia.

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live* .

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: June 26, 2015.

Richard G. Frank,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2015–16490 Filed 7–2–15; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 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 on Drug Abuse Special Emphasis Panel; R13 Conference Grant Review (PA 13–347).

Date: July 23, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel;

Mechanism for Time-Sensitive Drug Abuse Research (R21).

Date: July 24, 2015.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 30, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–16526 Filed 7–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Sickle Cell Disease Advisory Council (SCDAC) was renewed for an additional two-year period on June 30, 2015.

It is determined that the SCDAC is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquires may be directed to Jennifer Spaeth, Director, Office of Federal, Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail Code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov*.

Dated: June 30, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–16524 Filed 7–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Adolescent Brain Cognitive Development (ABCD) Study—Coordinating Center and Data Analysis and Informatics Center (U24).

Date: July 16, 2015.

Time: 10:00 a.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: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurological, Aging and Musculoskeletal Epidemiology.

Date: July 22, 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, (Virtual Meeting).

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; Member Conflict: AIDS and AIDS Related Research.

Date: July 29, 2015.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: July 29, 2015.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, guerriej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Diabetes and Obesity.

Date: July 30, 2015.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–385: Epigenetics in Gametogenesis and Transgenerational Inheritance.

Date: July 31, 2015.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Genes, Genomes, and Genetics IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–385: Epigenetics in Gametogenesis and Transgenerational Inheritance.

Date: July 31, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 5, 2015.

Time: 3:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

(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: June 29, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–16381 Filed 7–2–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0032]

Agency Information Collection Activities: Importers of Merchandise Subject to Actual Use Provisions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 5, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 23281) on April 27, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Abstract: In accordance with 19 CFR 10.137, importers of goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are required to maintain detailed records to establish that these goods were actually used as contemplated by the law, and to support the importer's claim for a free or reduced rate of duty. The importer shall maintain records of use or disposition for a period of three years from the date of liquidation of the entry, and the records shall be available at all times for examination by CBP.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 65 minutes.

Estimated Total Annual Burden Hours: 13,000.

Dated: June 29, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–16423 Filed 7–2–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0096]

Agency Information Collection Activities: Transfer of Cargo to a Container Station

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Transfer of Cargo to a Container Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 5, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory

Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 23282) on April 27, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station.

OMB Number: 1651–0096.

Abstract: Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivering cargo, containerized cargo may be moved from the place of unlading or may be received directly at the container station from a bonded carrier after transportation in-bond. This also applies to loose cargo as part of containerized cargo. In accordance with 19 CFR 19.42, the container station operator may make a request for the transfer of a container to the station by submitting to CBP an abstract of the manifest for the transferred containers including the bill of lading number, marks, numbers, description of the contents and consignee.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 14,327.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 358,175.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 41,548.

Dated: June 29, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–16424 Filed 7–2–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0017]

Notice of Public Workshop Regarding Information Sharing and Analysis Organizations

AGENCY: Office of Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Notice of public workshop.

SUMMARY: This Notice announces a public workshop on July 30, 2015 to discuss Information Sharing and Analysis Organizations, Automated Threat Information Sharing, and Analysis Capabilities and Requirements, as related to Executive Order 13691, ''Promoting Private Sector Cybersecurity Information Sharing'' of February 13, 2015. This workshop builds off of the workshop held on June 9, 2015 at the Volpe Center in Cambridge, MA.

DATES: The workshop will be held on July 30, 2015, from 8:00 a.m. to 5:00 p.m. The meeting may conclude before the allotted time if all matters for discussion have been addressed.

ADDRESSES: The meeting location is Silicon Valley at San Jose State University—1 Washington Sq., San Jose, CA 95192. See **SUPPLEMENTARY INFORMATION** section for the address to submit written or electronic comments.

SUPPLEMENTARY INFORMATION: Executive Order 13691 can be found at: *https://www.whitehouse.gov/the-press-office/2015/02/13/executive-order-promoting-private-sector-cybersecurity-information-shari.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please contact *ISAO@hq.dhs.gov* or Michael A. Echols, Director, JPMO, Department of Homeland Security, *michael.echols@dhs.gov*.

Background and Purpose

On February 13, 2015, President Obama signed Executive Order 13691 intended to enable and facilitate ''private companies, nonprofit organizations, and executive departments and agencies . . . to share information related to cybersecurity risks and incidents and collaborate to respond in as close to real time as possible.'' The order addresses two concerns the private sector has raised:

- How can companies share information if they do not fit neatly into the sector-based structure of the existing Information Sharing and Analysis Centers (ISACs)?
- If a group of companies wants to start an information sharing organization, what model should they follow? What are the best practices for such an organization?

ISAOs may allow organizations to robustly participate in DHS information sharing programs even if they do not fit into an existing critical infrastructure sector, seek to collaborate with other companies in different ways (regionally, for example), or lack sufficient resources to share directly with the government. ISAOs may participate in existing DHS cybersecurity information sharing programs and contribute to near-real-time sharing of cyber threat indicators.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact *ISAO@hq.dhs.gov* and write ''Special Assistance'' in the subject box or contact the meeting coordinator the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Meeting Details

Members of the public may attend this workshop by RSVP only up to the seating capacity of the room. We plan to audio record the Workshop Panels that

take place in the San Jose State University Ball Room and to make that audio recording available on the ISAO Web page *DHS.gov/ISAO*. A valid government-issued photo identification (for example, a driver's license) will be required for entrance to the building and meeting space. Those who plan to attend should RSVP through the link provided on the ISAO Web page *DHS.gov/ISAO* 7 days prior to the meeting. Requests made after July 23, 2015 might not be able to be accommodated.

We encourage you to participate in this meeting by submitting comments to the ISAO inbox *ISAO@hq.dhs.gov*, commenting orally, or submitting written comments to the DHS personnel attending the meeting who are identified to receive them.

Submitting Written Comments

You may also submit written comments to the docket using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*. Although comments are being submitted to the Federal eRulemaking Portal, this is a tool to provide transparency to the general public, not because this is a rulemaking action.

(2) *Email: ISAO@hq.dhs.gov*. Include the docket number in the subject line of the message.

(3) *Fax:* 703–235–4981, Attn: Michael A. Echols.

(4) *Mail:* Michael A. Echols, Director, JPMO–ISAO Coordinator, NPPD, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington VA 20598–0615.

To avoid duplication, please use only one of these four methods. All comments must either be submitted to the online docket on or before July 20, 2015, or reach the Docket Management Facility by that date.

Authority: 6 U.S.C. 131–134; 6 CFR. 29; E.O. 13691.

Dated: June 23, 2015.

Andy Ozment,

Assistant Secretary, Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–16517 Filed 7–2–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: Office of Law Enforcement/Federal Air Marshal Service LEO Reimbursement Request

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0063, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the reimbursement of expenses incurred by airport operators for the provision of law enforcement officers to support airport checkpoint screening.

DATES: Send your comments by September 4, 2015.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Pursuant to 49 U.S.C. 114(m), and 106(l) and (m), TSA has authority to enter into agreements with participants to reimburse expenses incurred by airport operators for the provision of LEOs in support of screening at airport checkpoints. Consistent with this authority, TSA created the LEO Reimbursement Program, which is run by the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS).

TSA OLE/FAMS requires that participants in the LEO Reimbursement Program record the details of all reimbursements sought. In order to provide for the orderly tracking of reimbursements, the LEO Reimbursement Program uses TSA Form 3503, LEO Reimbursement Request which captures and tracks reimbursement information.

The LEO Reimbursement Request form is available at *www.tsa.gov.* Upon completion, participants submit the LEO Reimbursement Request form directly to the OLE/FAMS LEO Reimbursement Program via fax, electronic upload via scanning the document, mail, or in person. The OLE/FAMS LEO Reimbursement Program reviews all request for reimbursement forms received. Based on the prior year participation, TSA estimates that there will be 326 participant responses monthly or 3,912 yearly.

TSA estimates each respondent will spend approximately one hour to complete the request for reimbursement form, for a total annual hour burden of 3,912 hours.

Dated: June 29, 2015. .

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–16471 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–52–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5834–N–01]

60 Day Notice of Proposed Information Collection; Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: September 4, 2015.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to either: Anna Guido, FOIA/Privacy Specialist: email: *Anna.P.Guido@hud.gov;* telephone: 202–402–5534 or Colette Pollard, Management Analyst: email: *Colette.Pollard@hud.gov;* telephone: 202–708–0306. The above phone numbers are not toll-free numbers. Address is Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410. Copies of available documents submitted to OMB may be obtained from either Ms. Guido or Ms. Pollard.

FOR FURTHER INFORMATION CONTACT: Debra Murphy, Ginnie Mae, 451 7th Street SW., Room B–133, Washington, DC 20410; email—*Debra.L.Murphy@hud.gov;* telephone—(202) 475–4923 (this is not a toll-free number); Victoria Vargas, Ginnie Mae, 451 7th Street SW., Room B–133, Washington, DC 20410; email—*Victoria.Vargas@hud.gov;* telephone (202) 475–6752 (this is not a toll-free number); or the Ginnie Mae Web site at *www.ginniemae.gov* for other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, .13 required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information 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 estimate of the burden hours of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0033.

Description of the need for the information and proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Under the Ginnie Mae I program, securities are backed by single-family or multifamily loans. Under the Ginnie Mae II pr.hgram securities are only backed by single-family loans. Both the Ginnie Mae I and II MBS are modified pass-through securities. The Ginnie Mae II multiple Issuer MBS is structured so that small issuers, who do not meet the minimum number of loans and dollar amount requirements of the Ginnie Mae I MBS, can participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permits the securitization of adjustable rate mortgages (''ARMs'').

Description of Proposed New Requirements: Due to the elimination of the application used for Fingerprint Enrollment used by Ginnie Mae issuers and document custodians to access the GinnieNET system, Ginnie Mae is revising our Appendix III–29 to include the following:

The name of the appendix will be changed to: Ginnie Mae Systems Access Appendix will have six (6) clearing defined sections. They are as follows:

Appendix III–29: Instructions: Incorporates language to make the Appendix applicable to Ginnie Mae's GinnieNET system as well as the Ginnie Mae GMEP system. It clarifies the relationship of the Appendix to Ginnie Mae form HUD 11708.

Appendix III–29 (A): Issuer Security Officer Registration: Incorporates language to make the Appendix applicable to Ginnie Mae's GinnieNET system as well as the Ginnie Mae GMEP system.

Appendix III–29 (B): User Registration for Issuer Only: Incorporates language to ensure the user acknowledgements and signed rules of behavior the encompass the use of the GinnieNET system. Adding a Ginnie NET section with two (2) check boxes to the following types of GinnieNET functions: GinnieNET RSA SecurID Token Holder and GinnieNET User.

Appendix III–29 (C): Custodian Security Officer Registration: Incorporates language to make the Appendix applicable to Ginnie Mae's GinnieNET system as well as the Ginnie Mae GMEP system.

Appendix III–29 (D): Custodian User Registration: Incorporates language to ensure the user acknowledgements and signed rules of behavior the encompass the use of the GinnieNET system. Adding a check box for GinnieNET SecurID Token Holder.

Appendix III–29 (E): RSA SecurID Token Request: New form to be used by Ginnie Mae Issuers and Document Custodians to obtain the required RSA Token and identify user access.

Appendix III–13: Name being changed from Electronic Data Interchanges System Agreement to Electronic Data Transfer Agreement Section 4.7: Choice of Law: will add: and Law of the District of Columbia.

The addition of the new sections and increase in Appendix III–29 is the reason for the increase of burden hours. There is no increase in burden hours with regard to Appendix III–13.

There are 15 forms and appendices in our collection which are volume driven rather than participant driven: these have increased as our portfolio has grown.

Included in the Guide are the appendices, forms, and documents necessary for Ginnie Mae to properly administer its MBS programs.

Agency form numbers, if applicable: 11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710A, 1710–B, 1710–C, 11710D, 11710E, 11711–A, 11711–B, 11714, 11714–SN, 11720, 11715, 11732, 11785

While most of the calculations are based on number of respondents multiplied by the frequency of response,

there are several items whose calculations are based on volume.

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	11–1	Letter of Transmittal	329	4	1200	0.033	43.4
11701	1–1	Application for Approval Ginnie Mae Mortgage-Backed Securities Issuer.	100	1	100	.3	300.0
11702	1–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	454	1	454	0.08	36.3
11703–	1–7	Master Agreement for Participation Accounting.	14	1	14	0.08	1.1
11704	11–2	Commitment to Guaranty Mortgage-Backed Securities.	329	4	1316	0.033	43.4
11707	111–1	Master Servicing Agreement.	468	1	468	0.033	15.4
11709	111–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	468	1	468	0.033	15.4
11715	111–4	Master Custodial Agreement.	468	1	468	0.033	15.4
11720	111–3	Master Agreement for Servicer's Escrow Custodial Account.	468	1	468	0.033	15.4
11732	111–22	Custodian's Certification for Construction Securities.	55	1	55	0.016	0.9
.....	IX–1	Financial Statements and Audit Reports.	468	1	468	1	468 0
.....	.....	Mortgage Bankers Financial Reporting Form.	315	4	1260	0.5	630.0
11709–A	1–6	ACH Debit Authorization.	468	1	468	0.033	15.4
11710 D	VI–5	Issuer's Monthly Summary Reports.	315	12	3780	0.13	491.4
11710A, 1710B, 1710C &11710E.	VI–12	Issuer's Monthly Accounting Report and Liquidation Schedule.	315	1	315	0.13	41.0
11710–DH	VI–21	HMBS Issuer's Monthly Summary Report.	14	12	168	0.13	21.8
	111–13	Electronic Data Transfer Agreement.	100	1	100	1	100.0
	111–14	Enrollment Administrator Signatories for Issuers and Document Custodians.	100	1	100	1	100.0
	1–4	Cross Default Agreement.	10	1	10	0.05	0.5
	VI–18	WHFIT Reporting	329	4	1316	0.13	171.0
	111–29	Systems Access Forms.	517	1	517	2	1034.0
	VIII–1	Ginnie Mae Acknowledgement Agreement and Accompanying Documents Pledge of Servicing.	10	1	10	1	10
	VI–19	Monthly Pool and Loan Level Report (RFS).	300	12	3600	0.13	468.0

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
The burden for the Items listed below is based on volume and/or number of requests.							
11705	111–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	315	12	42000	0.05	2100.0
11706	111–7	Schedule of Pooled Mortgages.	315	12	42000	0 08	97440.0
11705H	111–28	Schedule of Subscribers and Ginnie Mae Guaranty Agreement -HMBS Pooling-Import File Layout.	14	12	960	0.05	48
11708	V–5	Document Release Request.	329	1	329	0.05	16.5
	XI–6, XI–8, XI–9.	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	32	4	8000	0.033	1056.0
11711A and 11711B.	111–5	Release of Security Interest and Certification and Agreement.	329	1	678000	0.05	33900.0
11714 and 11714SN.	VI–10, VI–11	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	329	12	56400	0.016	10828.8
	VI–2	Letter for Loan Repurchase.	315	12	600	0 033	237.6
	V11–1	Collection of Remaining Principal Balances.	315	12	4800000	0.033	158400.0
	111–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	298	1	29811	0.05	14.9
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	21	1	21	0.25	5.3
	VIII–3	Assignment Agreements.	67	1	67	0.13	8.7
	111–9	Authorization to Accept Facsimile Signed Correction Request Forms.	329	12	128	0.016	2.0
	VI–17	HMBS Issuer Pooling & Reporting Specification for MBSAA.	.....	12	38400	0.13	4992.0
Total	.....	.....	.....	Varies	10,481,802	Varies	2,618,588

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 29, 2015.

Mary K. Kinney,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 2015–16478 Filed 7–2–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2014–0060; FF07CAMM00 FXES11130700000]

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Polar Bear Conservation Management Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft Polar Bear Conservation Management Plan (Polar Bear Plan). The polar bear is listed as threatened under the Endangered Species Act of 1973, as amended, and is also considered ''depleted'' under the Marine Mammal Protection Act of 1972, as amended. The draft Polar Bear Plan identifies objective, measurable recovery criteria, site-specific recovery actions, and time and cost estimates, and also serves as a conservation plan. We request review and comment on the Polar Bear Plan from agencies, organizations, and individuals with an interest in polar bear conservation.

DATES: To ensure consideration of your comments in our preparation of the final plan, we must receive your comments and information by August 20, 2015. However, we will accept information about any species at any time.

ADDRESSES: *Document availability:* The draft Polar Bear Plan is available for viewing at *http://www.fws.gov/alaska/pbrt/* or at *www.regulations.gov* at Docket No. FWS–R7–ES–2014–0060.

Comment submission: You may submit comments on the draft Polar Bear Plan by one of the following methods:

- U.S. mail or hand-delivery: Public Comments Processing, ATTN: FWS–R7–ES–2014–0060, U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803; or
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2014–0060.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, Chief, Marine Mammals Management, by telephone at 907–786–3800; by U.S. mail at Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; or by email at *mary_colligan@fws.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We announce the availability of our draft Polar Bear Conservation Management Plan (Polar Bear Plan). The polar bear (*Ursus maritimus*) was listed throughout its range as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). Because of its threatened status under the ESA, the species is also considered ''depleted'' under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) (MMPA). As required under the ESA section 4(f), the draft Polar Bear Plan identifies ''objective, measurable'' recovery criteria and site-specific recovery actions with estimated time and cost to completion for the polar bear. The Polar Bear Plan also serves as a conservation plan under the MMPA with a goal of conserving and restoring depleted marine mammals to their optimum sustainable population level, and will contribute to our international polar bear conservation efforts under the 1973 Agreement on the Conservation of Polar Bears (T.I.A.S. No. 8409). We request review and comment on the Polar Bear Plan from agencies, organizations, and individuals with an interest in polar bear conservation.

Background

We listed the polar bear as threatened on May 15, 2008 (73 FR 28212). For description, taxonomy, distribution, status, breeding biology and habitat, and a summary of factors affecting the species, please see the final listing rule. Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the ESA. To help guide the recovery effort, we prepare recovery plans for most listed species native to the United States. Further, the ESA requires that we develop recovery plans for listed species, unless such a plan would not promote the conservation of a particular species, and that we provide public notice and an opportunity for public review and comment during recovery plan development. Recovery plans describe actions considered necessary for the conservation and survival of the species, establish criteria for delisting listed species, and estimate time and cost for implementing needed recovery measures.

MMPA Conservation Plans have the purpose of conserving and restoring a species or stock to its optimum sustainable population. The MMPA further provides that Conservation Plans shall be modeled on ESA recovery plans. Therefore, once finalized, the Polar Bear Plan will provide us with recommended management actions for the survival and recovery of the species, and to conserve and restore the species to its optimum sustainable population.

Polar bears evolved to utilize the Arctic sea ice niche and are distributed throughout most ice-covered seas of the United States, Canada, the Russian Federation, Norway and Greenland/Denmark (Range States), in the Northern Hemisphere (see Figure 1 of the May 15, 2008, Listing Rule; 73 FR 28216). At the time of our 2008 final listing rule, we estimated the worldwide population of polar bears to be between 20,000 and 25,000 (73 FR 28215).

At the time of the listing, we determined that ongoing and projected loss of the polar bear's crucial sea ice habitat threatens the species throughout all of its range. Productivity, abundance, and availability of ice seals, the polar bear's primary prey base, would be diminished by the projected loss of sea ice, and energetic requirements of polar bears for movement and obtaining food would increase. Access to traditional denning areas would be affected. In turn, these factors would cause declines in the condition of polar bears from nutritional stress and reduced productivity. The eventual effect of this loss of sea ice is that the polar bear population would decline. The rate and magnitude of decline would vary geographically, based on differences in the rate, timing, and magnitude of impacts. However, within the foreseeable future, the worldwide population would be affected, and the species is likely to become in danger of extinction throughout all of its range (73 FR 28292–28293). As the Service explained in its listing determination, global climate change resulting from greenhouse gas emissions is the root cause of the loss of Arctic sea ice.

The Plan

The Polar Bear Plan is more broadly focused than a typical recovery or conservation plan. At its core, the Polar Bear Plan contains a set of fundamental goals reflecting shared values of its diverse stakeholders. The fundamental

goals express the intentions of the Polar Bear Plan and will be used to guide management, research, monitoring, and communication. They include the goals of the MMPA and the ESA, as they relate to polar bear conservation and recovery. Beyond the statutory mandates, the fundamental goals also reflect the input and aspirations of stakeholders closely connected with polar bears and their habitat, including the State of Alaska, the North Slope Borough, Alaska Native peoples, the Polar Bear Range States, conservation groups, and the oil and gas industry. In most cases, the fundamental goals represent range-wide objectives, but the specific applications under this Polar Bear Plan pertain primarily to the polar bear subpopulations (or stocks) present in Alaska. The goals call for a focus on conservation of polar bears while recognizing values associated with subsistence take, human safety, and economic activity. The draft Polar Bear Plan also contains specific recovery criteria, expressed in demographic and threats-based terms, to determine when the polar bear should be considered for delisting under the ESA, and demographic criteria to guide satisfying the conservation goals of the MMPA.

Conservation and recovery actions are specified in the Polar Bear Plan. The single most important action for the recovery of polar bears is global reduction of atmospheric greenhouse gases, which, if achieved, should result in reduced global climate change, including Arctic warming and sea ice loss. Along with communicating that fact, the Polar Bear Plan identifies a suite of high-profile actions designed to ensure that polar bears remain in sufficient number and diversity so that they are in a position to recover once climate change is addressed. Those actions include the following:

- Limit global atmospheric levels of greenhouse gases to levels appropriate for supporting polar bear recovery and conservation, primarily by reducing greenhouse gas emissions Support international conservation efforts through the Range States relationships
- Manage human–bear conflicts
- Collaboratively manage subsistence harvest
- Protect denning habitat
- Minimize risks of contamination from spills
- Conduct strategic monitoring and research

The full cost of implementing this Polar Bear Plan over the next 5 years is approximately $12,921,200.

Request for Public Comments

We request written comments on the draft Polar Bear Plan. All comments received by the date specified in **DATES** will be considered prior to finalization of the Polar Bear Plan. If you wish to comment, you may submit your comments and materials concerning this Plan by one of the methods listed in **ADDRESSES**.

Comments and materials received, as well as supporting documentation used in preparation of the recovery plan, will be available for inspection, during normal business hours at the Service's Anchorage office (see **FOR FURTHER INFORMATION CONTACT**).

This draft Polar Bear Plan represents the views and interpretations of the Service regarding the conservation and recovery of the polar bear only. The Service's approach set forth in this draft Polar Bear Plan does not necessarily preclude other approaches in developing ESA recovery plans or MMPA conservation plans. We seek comments from the public regarding viable alternatives for plans involving ice-dependent species and will consider all comments prior to finalizing this plan.

In addition, we specifically seek comments on the following:

(1) The scope and description of the six fundamental goals.

(2) The suitability and feasibility of the MMPA demographic criteria related to human-caused removals and to the health of the marine ecosystem of which polar bears are part.

(3) The suitability and feasibility of the ESA fundamental, demographic, and threats-based recovery criteria.

(4) The use of ecoregions as recovery units to represent the genetic, behavioral, life-history, and ecological diversity of the species.

(5) The conservation strategy and specific suite of high-priority conservation and recovery actions.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed our draft recovery plan under the authority of ESA section 4(f), 16 U.S.C. 1533(f), as well as section 115(b) of the MMPA, 16 U.S.C. 1383b(b). We publish this notice under ESA section 4(f) (16 U.S.C. 1531 *et seq.*).

Dated: June 5, 2015.

Geoffrey L. Haskett,

Regional Director, Alaska Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015–16249 Filed 7–2–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000.L13100000.PB0000.15X]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from respondents who provide certain information in order to conduct onshore oil and gas geophysical exploration on lands managed by the BLM or the U.S. Forest Service. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0162.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before August 5, 2015.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0162), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.*

Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0162'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Spencer, at 202–912–7146. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Spencer. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on December 24, 2014 (79 FR 77523), and the comment period ended February 23, 2015. The BLM received one comment in response to the notice, from DJ Environmental, Inc.

The commenter expressed confusion owing to the lack of a specific proposal in the notice, and asked if the notice is a simple matter of continuing a geophysical Notice of Intent as currently written. The BLM responded to the commenter via email, explaining that the notice pertains to a collection of information defined in the PRA, the BLM is planning to seek renewal of control number 1004–0162, and the notice is the first step in the renewal process. The collection of information was not modified in response to this comment.

During the approval period, the BLM consulted with several respondents via email, to solicit comments on the burden hours and cost estimates, availability of data, frequency of collection, and clarity of instructions. Two respondents provided feedback.

One respondent suggested limiting the scope of what is reported on item 5, page 1 of the Notice of Completion form, to places where surface disturbance has not been reclaimed and to show those areas on a U.S. Geological Survey topographic map. At present, that item reads, ''Describe any surface disturbance and how you reclaimed it.'' In response to the respondent's comment, the BLM decided to change this item to ''Describe any surface disturbance, its location, and how you reclaimed it.'' The BLM needs this description in order to locate all disturbed areas and ensure that reclamation is completed adequately.

Both respondents addressed items on the Notice of Intent form. One respondent requested better guidance on what is needed for ''Describe the survey type'' and better definition for ''Describe the survey method.'' The other respondent suggested changing ''Describe the survey type'' to seismic type, and the ''Describe the survey method'' to seismic method. This respondent also suggested that item 1 include geographic information system (GIS) shape files, and that item 4 should ask when the starting date will be for the casual use survey, as well as for exploration.

Item 1 of the Notice of Intent form already requires submission of GIS data in a format that is useful for the BLM and will not be modified to include GIS shape files. However, item 1 will be changed to ''A separate Plan of Operations is attached addressing items 1–5 below, in order to improve the clarity of the instruction.'' The BLM will leave item 4 the same since it is common for the casual use surveys to be started and completed as soon as possible. The BLM's main concern is when the equipment will be on location. Regarding the survey type and method, the BLM will not make the requested change. Seismic is a type of survey or method, in addition to other types of surveys or methods used, for example, electromagnetic.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0162 in your correspondence. 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.

The following information pertains to this request:

Title: Onshore Oil and Gas Geophysical Exploration (43 CFR Part 3150 and 36 CFR Parts 228 and 251).

Forms: BLM Form 3150–4/FS Form 2800–16, Notice of Intent and Authorization to Conduct Oil and Gas Geophysical Exploration Operations; and

BLM Form 3150–5/FS Form 2800–16a, Notice of Completion of Oil and Gas Geophysical Exploration Operations.

OMB Control Number: 1004–0162.

Abstract: Respondents supply information that enables the BLM and the U.S. Forest Service (FS) to ensure that geophysical exploration is conducted in a manner consistent with applicable statutes, regulations, land use plans, and environmental documents.

Frequency: On occasion.

Description of Respondents: 100 entities undertaking oil and gas geophysical exploration, *i.e.,* activity relating to the search for evidence of oil and gas on lands managed by the BLM and the FS.

Estimated Number of Responses Annually: 100.

Estimated Reporting and Recordkeeping ''Hour'' Burden Annually: 65.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden Annually: $25.

The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Time per response	D. Total hours (Column B × Column C)
Notice of Intent and Request to Conduct Geophysical Exploration Operations/Outside Alaska. 43 CFR 3151.1 BLM Form 3150–4/FS Form 2800–16.	45 (20 to BLM and 25 to FS)	1 hour	45
Notice of Intent and Request to Conduct Geophysical Exploration Operations/Alaska 43 CFR 3152.1, 3152.3, 3152.4, and 3152.5 BLM Form 3150–4.	1	1 hour	1
Notice of Completion of Geophysical Exploration Operations 43 CFR 3151.2 and 3152.7 BLM Form 3150–5/FS Form 2800–16a.	53 (28 to BLM and 25 to FS)	20 minutes	18
Data and Information Obtained in Carrying Out Exploration Plan (Alaska only) 43 CFR 3152.6.	1	1 hour	1
Totals	100		65

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2015–16440 Filed 7–2–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–18599; PPNECACOS0, PPMPSD1Z.YM0000]

Notice of July 20, 2015, Meeting for Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the 299th Meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The public meeting of the Cape Cod National Seashore Advisory Commission will be held on Monday, July 20, 2015, at 1:00 p.m. (EASTERN).

ADDRESSES: The Commission members will meet in the conference room at park headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667.

The 299th meeting of the Cape Cod National Seashore Advisory Commission will take place on Monday, July 20, 2015, at 1:00 p.m., in the conference room at Headquarters, 99 Marconi Station Road, in Wellfleet, Massachusetts to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (March 30, 2015)
3. Reports of Officers
4. Reports of Subcommittees
   - Update of Pilgrim Nuclear Plant Emergency Planning Subcommittee
   - State Legislation Proposals
   - Nickerson Fellowship
5. Superintendent's Report
   - Shorebird Management Plan
   - Hydro-clamming Update
   - Nauset Spit Update
   - Recreational Fee Increase
   - National Park Service Centennial
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Highlands Center Update
   - Ocean Stewardship Topics—Shoreline Change
   - Climate Friendly Parks
6. Old Business
   - Live Lightly Campaign Progress Report
7. New Business
8. Date and Agenda for Next Meeting
9. Public comment
10. Adjournment

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from George E. Price, Jr. Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, or via telephone at (508) 771–2144.

The meeting is open to the public. It is expected that 15 persons will be able to attend in addition to the Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Park Superintendent prior to the meeting.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126, as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

Before including your address, telephone 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 may 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: June 29, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–16486 Filed 7–2–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKRO–CAKR–KOVA–DENA–18653; PPAKAKROR4; PPMPRLE1Y.LS0000]

Notice of Open Public Meetings and Teleconferences for the National Park Service Alaska Region Subsistence Resource Commission Program

AGENCY: National Park Service, Interior.

ACTION: Meeting Notices.

SUMMARY: As required by the Federal Advisory Committee Act (16 U.S.C. Appendix 1–16), the National Park Service (NPS) is hereby giving notice that the Cape Krusenstern National Monument Subsistence Resource Commission (SRC), the Kobuk Valley National Park SRC, and the Denali National Park SRC will hold public meetings to develop and continue work on NPS subsistence program recommendations, and other related regulatory proposals and resource management issues. The NPS SRC program is authorized by Section 808 of the Alaska National Interest Lands Conservation Act, (16 U.S.C. 3118), title VIII.

Cape Krusenstern National Monument SRC Meeting/Teleconfernce Date and Location: The Cape Krusenstern National Monument SRC will meet from 9:00 a.m. to 5:00 p.m. or until business is completed on Wednesday, July 22, 2015, at the Northwest Arctic Heritage Center in Kotzebue, AK. Teleconference participants must call the Cape Krusenstern National Monument office at (907) 442–3890 by Monday, July 20, 2015, prior to the meeting to receive teleconference passcode information. The alternate meeting date is Wednesday, July 29, 2015, in case of postponement due to weather, lack of commission quorum or other unforeseen circumstances. For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact Ken Adkisson, Subsistence Manager, at (907) 443–6104, or via email at *ken_adkisson@nps.gov* or Clarence Summers, Subsistence Manager, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

Kobuk Valley National Park SRC Meeting/Teleconference Date and Location: The Kobuk Valley National Park SRC will meet from 9:00 a.m. to 5:00 p.m. or until business is completed on Thursday, July 23, 2015, at the Northwest Arctic Heritage Center in Kotzebue, AK. Teleconference participants must call the Cape Krusenstern National Monument office at (907) 442–3890 by Monday, July 20, 2015, prior to the meeting to receive teleconference passcode information. The alternate meeting date is Thursday, July 30, 2015, in case of postponement due to weather, lack of commission quorum or other unforeseen circumstances.

For more detailed information regarding this meeting or if you are interested in applying for SRC membership contact Ken Adkisson, Subsistence Manager, at (907) 443–6104, or via email at *ken_adkisson@nps.gov* or Designated Federal Official Frank Hays, Superintendent, at (907) 442–3890, or via email at *frank_hays@nps.gov,* or Clarence Summers, Subsistence Manager, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

Denali National Park SRC Meeting Date and Location: The Denali National Park SRC will meet from 10:00 a.m. to 3:00 p.m. or until business is completed on Wednesday, August 5, 2015, at the Nikolai School in Nikolai, AK. For more detailed information regarding this meeting, or if you are interested in applying for SRC membership, contact Amy Craver, Subsistence Manger at (907) 683–9544 or by email at *amy_craver@nps.gov* or Clarence Summers, Subsistence Manager, at (907) 644–3603 or via email at *clarence_summers@nps.gov.*

Proposed Meeting Agenda: The agenda may change to accommodate SRC business. The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introductions
3. Review and Adoption of Agenda
4. Approval of Minutes
5. Superintendent's Welcome and Review of the Commission Purpose
6. Commission Membership Status
7. SRC Chair and Members' Reports
8. Superintendent's Report—NPS
9. Old Business
10. New Business
11. Federal Subsistence Board Update
12. Alaska Boards of Fish and Game Update
13. National Park Service Reports
    a. Ranger Update
    b. Resource Management Update
    c. Subsistence Manager's Report
14. Public and Other Agency Comments
15. Work Session
16. Set Tentative Date and Location for Next SRC Meeting
17. Adjourn Meeting

SRC meeting locations and dates may change based on inclement weather or exceptional circumstances. If the meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and radio stations to announce the rescheduled meeting.

SUPPLEMENTARY INFORMATION: SRC meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. SRC meetings will be recorded and meeting minutes will be available upon request from the Superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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 may 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: June 30, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–16487 Filed 7–2–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–KALA–18652; PPPWKALA00; PPMPSPD1Z.YM0000]

Notice of July 29, 2015, Meeting for Kalaupapa National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: As required by the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the National Park Service is giving notice of the July 29, 2015, meeting of the Kalaupapa National Historical Park Advisory Commission.

DATES: The public meeting of the Kalaupapa National Historical Park Advisory Commission will be held on Wednesday, July 29, 2015, at 9:45 a.m. (HAWAII STANDARD TIME).

ADDRESSES: The meeting will be held at Paschoal Hall, Kalaupapa National Historical Park, Kalaupapa, Hawaii 96742.

Agenda

The Commission meeting will consist of the following:

1. Approval of Agenda.
2. Approval of April 21, 2015, Minutes.
3. Superintendent's Report.
4. Draft General Management Plan and Environmental Impact Statement Presentation.
5. Memorial Update.
6. Public Comments.

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Designated Federal Official Erika Stein Espaniola, Superintendent, Kalaupapa National Historical Park, P.O. Box 2222, Kalaupapa, Hawaii 96742, telephone (808) 567–6802, ext. 1100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Before including your address, telephone 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 may 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: June 29, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–16485 Filed 7–2–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–SERO–BICY–17490; PPSESEROC3, PMP00UP05.YP0000]

Determination of Eligibility for Consideration as Wilderness Areas, Intent To Prepare Wilderness Study, Big Cypress National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of determination of wilderness eligibility for lands in Big Cypress National Preserve and intent to expand the scope of the Backcountry Access Plan (BAP)/Environmental Impact Statement (EIS) to include a wilderness study.

SUMMARY: The National Park Service (NPS) has completed a Wilderness Eligibility Assessment to determine if lands within the original 1974 legislated boundary of Big Cypress National Preserve (Preserve) meet criteria indicating eligibility for preservation as wilderness. Based on the assessment, the NPS has concluded that of the 557,065 acres assessed, 188,323 acres meet the eligibility criteria.

In accordance with NPS *Management Policies 2006,* Section 6.2.2, the scope of the BAP/EIS currently being prepared for the Preserve will be expanded to include a wilderness study to determine if any portions of the Preserve should be recommended for inclusion in the National Wilderness Preservation System as defined in the Wilderness Act of 1964. A notice of intent to prepare an EIS with the BAP was published in the **Federal Register** of March 11, 2014. This additional notice is being published in accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act of 1969 (NEPA), specifically 40 CFR 1501.7.

The NPS will conduct public meetings in the local area to receive further input from interested parties on issues, concerns, and suggestions pertinent to backcountry use and access and wilderness designation within the Preserve. The comment period will be announced through local media outlets, at the meetings, and on the backcountry access plan Web site at *http://parkplanning.nps.gov/bicy.*

DATES: The date, time, and location of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov/bicy,* the Preserve Web site, and in local media outlets.

ADDRESSES: Maps and descriptions of eligible lands are on file at Big Cypress National Preserve Headquarters, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000 and available on the backcountry access plan Web site at *http://parkplanning.nps.gov/bicy.*

FOR FURTHER INFORMATION CONTACT: Requests for further information should be directed to Big Cypress National Preserve Chief of Interpretation Bob DeGross by phone at 239–695–1107, via email at *Bob_DeGross@nps.gov,* or by mail at Big Cypress National Preserve, 33100 Tamiami Trail, East Ochopee, Florida 34141.

SUPPLEMENTARY INFORMATION: The Preserve staff reviewed the Primary Eligibility Criteria in Section 6.2.1.1 of the NPS *Management Policies 2006* to evaluate the Preserve's wilderness eligibility. This wilderness eligibility assessment was prepared in support of the Preserve's Backcountry Access Plan/Environmental Impact Statement. More detailed analysis and intensive review of the eligibility of these lands will be carried out through a formal wilderness study in the context of the BAP/EIS. According to NPS Director's Order 41, the completed wilderness study may result in revised eligibility determinations for lands within the original Preserve as well as the identification of a need to re-assess adjacent areas added to the Preserve in 1988.

Public notices announcing the Preserve's intention to conduct this eligibility assessment were published in the **Federal Register** on December 15, 2014, and through a press release sent to local media outlets on September 12, 2014.

Dated: June 29, 2015.

Shawn T. Benge,

Deputy Regional Director, Southeast Region.

[FR Doc. 2015–16481 Filed 7–2–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–ZION–15480; PX.PD166570D.00.1]

Boundary Description and Final Maps for Virgin River, Zion National Park, Utah

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Wild and Scenic Rivers Act, the National Park Service has transmitted the final boundary description and map of the Virgin Wild and Scenic River to Congress. The classification and boundaries became effective as stated elsewhere in this notice.

DATES: The boundaries and classification of the Virgin Wild and Scenic River became effective October 26, 2014.

ADDRESSES: Documents may be viewed at any National Park Service Office through the LandsNet Web site [*http://landsnet.nps.gov/tractsnet/documents/ZION/Miscellaneous/zion_VirginWSR_116-123881-83,85,87,89-90.pdf*] and at Zion National Park Headquarters, SR 9 Springdale, UT 84767.

FOR FURTHER INFORMATION CONTACT: National Park Service Denver Service Center, 12795 W. Alameda Parkway, Denver, CO 80228, 303–969–2325; *tracy_atkins@nps.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) of March 30, 2009, designated the Virgin Wild and Scenic River, to be administered by the Secretary of Interior. As specified by law (16 U.S.C. 1274(b)), the boundary becomes effective 90 days after the boundary amendments are forwarded to Congress. Since the boundary amendments were forwarded on July 28, 2014, the boundaries became effective on October 26, 2014.

Additional portions of the Virgin Wild and Scenic River are managed by the Bureau of Land Management. In accordance with national BLM policies outlined in BLM's Manual 6120, section .12, *Congressionally Required Maps and Legal Boundary Descriptions for NLCS Designations* requires that legal boundary description must be developed in conformance with BLM's *Manual of Surveying Instructions, 2009* and be finalized by the State Office Chief Cadastral Surveyor. Utah BLM will prepare these maps and legal boundary descriptions specific to the BLM segments of the Virgin River. Utah BLM will submit them to Congress as an amended submittal and to the Eastern States Office (in accordance with Manual 6120) at a later date.

Dated: May 27, 2015.

Sue E. Masica,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2015–16475 Filed 7–2–15; 8:45 am]

BILLING CODE 4312–CB–P

INTERNATIONAL TRADE COMMISSION

Certain Windshield Wipers and Components Thereof

[Investigation No. 337–TA–928 and Investigation No. 337–TA–937 (Consolidated)]

Notice of a Commission Determination not to Review an Initial Determination Terminating Investigation as to Federal-Mogul Respondents Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 24) of the presiding administrative law judge (''ALJ'') terminating the investigation as to Federal-Mogul respondents based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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: The Commission instituted Investigation No. 337–TA–928, *Certain Windshield Wipers and Components Thereof,* under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), on September 2, 2014, based on a complaint filed by Valeo North America, Inc. of Troy, MI, and Delmex de Juarez S. de R.L. de C.V. of Mexico (collectively, ''Valeo''). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,891,044 (''the '044 patent''); 7,937,798 (''the '798 patent''); and 8,220,106 by Federal-Mogul Corp. of Southfield, Michigan; Federal-Mogul Vehicle Component Solutions, Inc. of Southfield, Michigan; and Federal-Mogul S.A. of Aubange, Belgium (collectively, ''Federal-Mogul''). 79 FR 52041–42 (Sep. 2, 2014).

On November 21, 2014, the Commission instituted Investigation No. 337–TA–937, *Certain Windshield Wipers and Components Thereof,* based on a separate complaint filed by Valeo. The complaint alleges a violation of section 337 by reason of infringement of certain claims of the '044 patent and the '798 patent by Trico Products Corporation of Rochester Hills, Michigan, Trico Products of Brownsville, Texas; and Trico Componentes SA de CV of Tamaulipas, Mexico. 79 FR 69525–26 (Nov. 21, 2014).

On December 9, 2014, the ALJ consolidated Investigation Nos. 337–TA–928 and 337–TA–937. *See* ALJ Order No. 8 in the investigation 337–TA–928. The Office of Unfair Import Investigations does not participate as a party in these consolidated investigations.

On May 19, 2015, complainants Valeo and respondents Federal-Mogul, *inter alia,* filed a joint motion pursuant to 19 CFR 210.21(a)(2) and (b) to terminate by settlement the Federal-Mogul respondents. No responses were filed.

On June 5, 2015, the ALJ issued Order No. 24 in which he, *inter alia,* granted the joint motion to terminate the investigation as to respondents Federal-Mogul based on a settlement agreement. This portion of Order No. 24 represents the subject ID. The ALJ found that the joint motion complies with the Commission Rules, and that termination of the investigation as to Federal-Mogul is in the public interest and will conserve public and private resources. No party petitioned for review of Order No. 24, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 29, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–16436 Filed 7–2–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Third Review)]

Preserved Mushrooms from Chile, China, India, and Indonesia; Scheduling of expedited five-year reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective Date:* June 5, 2015.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On June 5, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 11221, March 2, 2015) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly,

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be

the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report. A staff report containing information concerning the subject matter of these reviews was placed in the nonpublic record on June 19, 2015, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to these reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to these reviews may file written comments with the Secretary on what determination the Commission should reach in these reviews. Comments are due on or before July 6, 2015 and may not contain new factual information. Any person that is neither a party to these five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by July 6, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination. The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 29, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–16434 Filed 7–2–15; 8:45 am]

BILLING CODE 7020–02–P

available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by L.K. Bowman Co., Monterey Mushrooms, Inc., and The Mushroom Co. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Johnson Matthey, Inc.

ACTION: Notice of registration.

SUMMARY: Johnson Matthey, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Johnson Matthey, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated February 11, 2015, and published in the **Federal Register** on February 19, 2015, 80 FR 8901, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16452 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: United States Pharmacopeial Convention

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before August 5, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before August 5, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on March 3, 2015, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
Codeine-N-oxide (9053)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Phenylacetone (8501)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

The company plans to import the listed controlled substances in bulk powder form from foreign sources for the manufacture of analytical reference standards for sale to their customers.

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16445 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Halo Pharmaceutical, Inc.

ACTION: Notice of registration.

SUMMARY: Halo Pharmaceutical, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Halo Pharmaceutical, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3979, Halo Pharmaceutical, Inc., 30 North Jefferson Road, Whippany, New Jersey 07981 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Halo Pharmaceutical, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances:

Controlled substance	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and to manufacture other controlled substances for distribution to its customers. Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16456 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Kremers Urban Pharmaceuticals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before August 5, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before August 5, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL/8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on January 12, 2015, Kremers Urban Pharmaceuticals, Inc., 1101 C Avenue West, Seymour, Indiana 47274 applied to be registered as an importer of methylphenidate (1724), a basic class of controlled substance listed in schedule II.

The company plans to import the listed substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16444 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before September 4, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on March 20, 2015, AMPAC Fine Chemicals LLC, Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Methylphenidate (1724)	II
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company is a contract manufacturer. In reference to Poppy Straw Concentrate the company will manufacture thebaine intermediates for sale to its customers for further manufacture. No other activity for this drug code is authorized for this registration.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16443 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Rhodes Technologies

ACTION: Notice of registration.

SUMMARY: Rhodes Technologies applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Rhodes Technologies registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 21, 2015, and published in the **Federal Register** on January 28, 2015, 80 FR 4593, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816 applied to be registered as a manufacturer of certain basic classes of controlled substances. One objection was received on March 27, 2015. However, after a thorough review of this matter, the Drug Enforcement Administration has concluded that the issues raised in the objection do not warrant the denial of this application.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Rhodes Technologies to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance

of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances:

Controlled substance	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the above-listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

In reference to drug code 7370, the company plans to bulk manufacture a synthetic tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16458 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Lipomed, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before August 5, 2015. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before August 5, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on March 31, 2014, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Mephedrone (4-Methyl-N-methylcathinone) (1248)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
Mecloqualone (2572)	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) (6250)	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) (7008)	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole) (7019)	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) (7081)	I
SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole (7104)	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl) indole) (7118)	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) (7122)	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole) (7173)	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole) (7200)	I
AM–2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) (7201)	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) (7203)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) (7297)	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) (7298)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Parahexyl (7374)	I
Mescaline (7381)	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C–T–2) (7385)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I

Controlled substance	Schedule
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole (7398)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylenedioxyamphetaimine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N–N-dimethyltryptamine (7431)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473)	I
N-Ethyl-3-piperidyl benzilate (7482)	I
N-Methyl-3-piperidyl benzilate (7484)	I
N-Benzylpiperazine (7493)	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D) (7508)	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C–E) (7509)	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H) (7517)	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C–I) (7518)	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C–C) (7519)	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C–N) (7521)	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C–P) (7524)	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C–T–4) (7532)	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535)	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) (7540)	I
AM–694 (1-(5-Fluropentyl)-3-(2-iodobenzoyl) indole) (7694)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine (except HCI) (9056)	I
Codeine methylbromide (9070)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-oxide (9307)	I
Myrophine (9308)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Thebacon (9315)	I
Acetorphine (9319)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetyl-methadol (9603)	I
Alphamethadol (9605)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etoxeridine (9625)	I
Furethidine (9626)	I
Hydroxypethidine (9627)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Morpheridine (9632)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I

Controlled substance	Schedule
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Propiram (9649)	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCl (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-B (9233)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Phenazocine (9715)	II
Piminodine (9730)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Bezitramide (9800)	II
Fentanyl (9801)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16448 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Euticals, Inc.

ACTION: Notice of registration.

SUMMARY: Euticals, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Euticals, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3978, Euticals, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Euticals, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Oripavine (9330)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

In reference to Amphetamine (1100), the company plans to acquire the listed controlled substance in bulk from a domestic source in order to manufacture other controlled substances in bulk for distribution to its customers.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16454 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Navinta, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before September 4, 2015.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODXL, 8701 Morrissette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on February 4, 2015, Navinta, LLC, 1499 Lower Ferry Road, Ewing, New Jersey 08618–1414 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Fentanyl (9801)	II

The company plans initially to manufacture API quantities of the listed controlled substances for validation purposes and FDA approval, then eventually upon FDA approval to produce commercial size batches for distribution to dosage form manufacturers.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16441 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Mylan Pharmaceuticals, Inc.

ACTION: Notice of registration.

SUMMARY: Mylan Pharmaceuticals, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Mylan Pharmaceuticals, Inc. registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated March 20, 2015, and published in the **Federal Register** on March 27, 2015, 80 FR 16436, Mylan Pharmaceuticals, Inc., 3711 Collins Ferry Road, Morgantown, West Virginia 26505 applied to be registered as an importer

of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Mylan Pharmaceuticals, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Remifentanil (9739)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16453 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Noramco, Inc.

ACTION: Notice of registration.

SUMMARY: Noramco, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Noramco, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated September 26, 2014, and published in the **Federal Register** on October 7, 2014, 79 FR 60498, Noramco, Inc., Olympic Drive, Athens, Georgia 30601 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Dated: June 25, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–16455 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection Request for Emergency or Term Access to National Security Information Form (FD–1116)

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Security Division (SecD) 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 FR 80 23290, April 27, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 5, 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 the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email 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:* Approval of a new collection.

(2) *Title of the Form/Collection:* Request for Emergency or Term Access to National Security Information Form

(3) *Agency form number:* FD–1116

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by to collect information in order to initiate a background investigation before access is granted to classified and sensitive information to private sector people.

(5) *An estimate of the total number of respondents and the amount of time estimated*

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 83 total annual burden hours associated with this collection.

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: June 30, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–16484 Filed 7–2–15; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of an individual Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of One New System of Records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document proposes to establish an individual system of records to the current systems of records of the Department of Labor (Department or DOL).

DATES: Persons wishing to comment on the changes set out in this notice may do so on or before August 17, 2015.

DATES: *Effective Date:* Unless there is a further notice in the **Federal Register**, this new system of record will become effective on August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Joseph J. Plick, Counsel for FOIA and Information Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N–2420, Washington, DC 20210, telephone (202) 693–5527, or by email to *plick.joseph@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor has established a system of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of updates to its systems of records.

This current document presents one new system of records. This notice provides a summary of the new system of records and then provides the Universal Routine Uses applicable to this new system of records.

The proposed new system is entitled DOL/VETS–5, *Veterans' Data Exchange Initiative (VDEI).* This system contains records related to Exiting Service Members (ESMs) participating in the United States Department of Defense (DOD) Pre-separation Counseling of the Transition Assistance Program.

General Prefatory Statement

A. Universal Routine Uses of the Records

The following routine uses of the records apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses *do not* apply to DOL/OASAM–5, *Rehabilitation and Counseling File;* DOL/OASAM–7, *Employee Medical Records,* and DOL/CENTRAL–3, *Internal Investigations of Harassing Conduct.*

1. To disclose the records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the agency collected the records.

2. To disclose the records in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the agency determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and that the use of such records or information is for a purpose that is compatible with the purposes for which the agency collected the records.

4. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

6. To disclose to contractors, employees of contractors, consultants, grantees, and volunteers who have been engaged to assist the agency in the performance of or working on a contract, service, grant, cooperative agreement or other activity or service for the Federal Government.

Note: Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; *see also* 5 U.S.C. 552a(m).

7. To the parent locator service of the Department of Health and Human Services or to other authorized persons defined by Public Law 93–647 (42 U.S.C. 653(c)) the name and current address of an individual for the purpose of locating a parent who is not paying required child support.

8. To any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. To a Federal, State, local, foreign, tribal, or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. To the Office of Management and Budget during the coordination and clearance process in connection with legislative matters.

11. To the Department of the Treasury, and a debt collection agency with which the United States has contracted for collection services, to recover debts owed to the United States.

12. To the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Solicitor of Labor determines that disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by this system, or (3) the Solicitor of Labor determines that there exists a legitimate public interest in the disclosure of the information, provided the Solicitor of Labor determines in any of these situations that the public interest in disclosure of specific information in the context of a particular case outweighs the resulting invasion of personal privacy.

B. System Location—Flexiplace Programs

The following paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, **SYSTEM LOCATION**.

Pursuant to the Department of Labor's Flexiplace Programs (also known as ''telework'' pursuant to the Telework Enhancement Act), copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites.

Signed at Washington, DC, this 22 day of June, 2015.

Thomas E. Perez,

Secretary of Labor.

DOL/VETS–5

SYSTEM NAME:

Veterans' Data Exchange Initiative (VDEI)

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

The VDEI servers are located at the ByteGrid Data Center, 12401 Prosperity Drive, Silver Spring, Maryland 20904.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Exiting Service Members (ESMs) participating in the United States Department of Defense (DOD) Pre-separation Counseling of the Transition Assistance Program (TAP) who complete documentation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system are for ESMs who participated in this program. Records contain the following personally identifiable information (PII) data for ESMs:

1. Branch
2. Name
3. Rank
4. SSN
5. Gender
6. Race
7. Basic Active Service Date
8. Expiration Service Date
9. Level of Education
10. Guard/Reserve Status
11. Date of Birth
12. Military Occupational Specialty
13. Type of Discharge
14. EDIPI (DOD Electronic Data Interchange Person Identifier)
15. Marital Status
16. Home of Record State Code
17. Home of Record Country Code
18. Citizenship
19. Email Address
20. Mailing Address Street Address
21. Mailing Address City
22. Mailing Address State Code
23. Mailing Address Zip Code
24. Date Began the Department of Labor Employment Workshop (DOL EW) During TAP
25. Date End DOL EW During TAP
26. Location DOL EW During TAP
27. Number of Dependents Under Eighteen
28. Armed Services Vocational Aptitude Battery (ASVAB)/Armed Forces Qualification Test (AFQT) Score
29. Medical Discharge

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) DMDC 01, Defense Manpower Data Center Data Base, November 23, 2011, 76 FR 72391; 38 U.S.C. 4102, Job Counseling, Training, and Placement Service for Veterans; and (2) 10 U.S.C. 1142, Pre-separation Counselling; E.O. 9397.

PURPOSE(S):

To provide services to ESMs in areas of employment and training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the universal routine uses, VETS intends to be a conduit for other departments who need similar veteran data (upon approval from DOD).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically.

RETRIEVABILITY:

Files are retrieved by:

1. Branch, Race, Level of Education, Length of Service, Military Occupational Specialty (MOS), Length of Service (Basic Active Service Date and Expiration Service Date), Marital Status, Gender, Medical Discharge, Number of Dependents Under 18 and Type of Discharge; or

2. EDIPI, Rank, Mailing Address Street Address, Mailing Address City, Mailing Address State Code, Mailing Address Zip Code, Mailing Address, Home of Record State Code, Home of Record Country Code, Length of TAP (Date Begun DOL EW TAP and Date End DOL EW TAP), Location of the DOL EW during TAP, Citizenship, Guard/Reserve status, and ASVAB score/AFQT score.

SAFEGUARDS:

Accessed by authorized personnel only. Computer security safeguards are used for electronically stored data.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Agency Management and Budget United States

Department of Labor Veterans' Employment and Training Service, 200 Constitution Ave. NW., Washington, DC 20210.

NOTIFICATION PROCEDURE:

Inquiries should be mailed to the System Manager.

RECORD ACCESS PROCEDURE:

A request for access should be mailed to the System Manager.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be mailed to the System Manager.

RECORD SOURCE CATEGORIES:

Information contained within this system is obtained from the DOD/DMDC.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2015–16460 Filed 7–2–15; 8:45 am]

BILLING CODE 4510–49–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Thursday, July 23, 2015, 9:00 a.m.–4:30 p.m. (Eastern Daylight Time), and on Friday, July 24, 2015, 9:00 a.m.–12:30 p.m. (Eastern Daylight Time) in Washington, DC.

PLACE: This meeting will occur in Washington, DC, at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004. Interested parties are welcome to join in person or by phone in a listening-only capacity (other than the period allotted for by-phone public comment on Friday, July 24) using the following call-in number: 888–523–1225; Conference ID: 7629517; Conference Title: NCD Meeting; Host Name: Jeff Rosen.

MATTERS TO BE CONSIDERED: The Council will receive reports from its standing committees; release its annual Progress Report; review and vote on proposed policy projects for FY16 and FY17; discuss updates on the rights of parents with disabilities; host a discussion on emerging technologies; and receive public comment focused on future directions in technology policy.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Thursday, July 23

9:00–10:15 a.m.—Call to Order, Standing Committee Reports
10:15–11:15 a.m.—Release of the NCD Progress Report and Discussion Panel
11:15 a.m.–12:00 p.m.—Remarks by Maria Town, Associate Director for Public Engagement, The White House (tentative)
12:00–12:30 p.m.—Impact of the ADA in American Communities 2025
12:30–1:30 p.m.—Lunch Break
1:30–2:00 p.m.—Discussion of Proposed Changes to Congressional Justification
2:00–3:00 p.m.—Council Presentations of Proposed FY16, FY17 Policy Projects
3:00–3:15 p.m.—Break
3:15–4:30 p.m.—Continuation of Presentations and Vote
4:30 p.m.—Adjournment

Friday, July 24

9:00–10:15 a.m.—Civil Rights of Parents with Disabilities Discussion
10:15–11:45 a.m.—Accessibility in Emerging Technologies Discussion
11:45 a.m.–12:30 p.m.—Public Comment (Note: Comments received will be limited to those regarding future directions in technology policy.)
12:30 p.m.—Adjournment

Public Comment: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Wednesday, July 22, 2015. Priority will be given to those individuals who are in-person to provide their comments. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the July quarterly meeting will be limited to those regarding future directions in technology policy.

Contact Person: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

Accommodations: A CART streamtext link has been arranged for this teleconference meeting. The web link to access CART on July 23, 2015 is *http://www.streamtext.net/text.aspx?event=072315ncd900am*; and on July 24, 2015 is *http://www.streamtext.net/text.aspx?event=072415ncd900am*.

Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: June 30, 2015.

Rebecca Cokley,

Executive Director.

[FR Doc. 2015–16559 Filed 7–1–15; 11:15 am]

BILLING CODE 8421–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision of a Currently Approved Information Collection, Credit Union Service Organizations; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA amended its credit union service organization (CUSO) regulation to increase transparency and address certain safety and soundness concerns. The final rule extends certain requirements of the CUSO regulation to federally insured, state-chartered credit unions and imposes new requirements on federally insured credit unions (FICUs). Under the amended rule FICUs with an investment in, or loan to, a CUSO must obtain a written agreement with the CUSO addressing accounting, financial statements, audits, reporting, and legal opinions. The rule limits the ability of a ''less than adequately capitalized'' FICU to recapitalize an insolvent CUSO. All CUSOs are required to annually provide basic profile information to NCUA and the appropriate state supervisory authority (SSA). CUSOs engaging in certain

complex or high-risk activities are also required to report more detailed information, including audited financial statements and customer information.

DATES: Comments will be accepted until September 4, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Joy Lee, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

OMB Reviewer: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to:

NCUA Contact: Joy Lee, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is revising the currently approved collection of information, OMB Control Number, 3133–0149, to reflect amendments to part 712 (part 712 or the rule). Part 712 of the National Credit Union Administration's (NCUA) regulations [1] implements authority in the Federal Credit Union Act [2] relating to federally insured credit union (FICU) lending or investment activity with a credit union service organization (CUSO). The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain recordkeeping obligations on FICUs that have investment or lending relationships with, or conduct operations through, CUSOs. Certain reporting obligations are imposed on natural person credit union CUSOs and corporate credit union CUSOs as a result of the rule.

Part 712 contains the following information collection (IC) requirements:

(IC 1.) Obtain Written Agreement. Before making a loan to, or investment in, a CUSO, a FICU must obtain a written agreement from the CUSO (or revise any current agreement the FICU has with a CUSO) that the CUSO will: Follow generally accepted accounting principles (GAAP); prepare financial statements at least quarterly and obtain an annual opinion audit from a licensed certified public accountant; provide access to its books and records to NCUA and the appropriate SSA; and file financial and other reports directly with NCUA and the appropriate SSA;

(IC 2.) Obtain Written Legal Opinion. A FICU must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the credit union's exposure to loss of its loans to, or investments in, the CUSO;

(IC 3.) Obtain Regulatory Approval. Any FICU that is or, as a result of recapitalizing an insolvent CUSO will become, less than adequately capitalized, must seek NCUA approval before recapitalizing an insolvent CUSO; and

(IC 4.) CUSO Reporting. A CUSO with an investment or loan from a FICU must annually submit a report directly to NCUA and the appropriate SSA that contains financial and other information prescribed in the rule. All CUSOs are required to provide basic profile information to NCUA and the appropriate SSA. CUSOs engaging in certain complex or high-risk activities are also required to report more detailed information, including audited financial statements and customer information.

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.

NCUA requests that you send your comments on the information collection requirements for Credit Union Service Organizations, 12 CFR part 712, to the locations listed in the **ADDRESSES** section. Your comments should address: (a) the necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

II. Data

Title: Credit Union Service Organizations, 12 CFR part 712.

OMB Number: 3133–0149.

Form Number: None.

Type of Review: Revision to a currently approved collection.

Description: NCUA amended part 712 to increase transparency and address safety and soundness concerns about activities conducted by CUSOs and imposes certain recordkeeping obligations on FICUs that have investment or lending relationships with, or conduct operations through, CUSOs.[3] The final rule extends certain requirements of the CUSO regulation to federally insured, state-chartered credit unions and imposes new requirements on federally insured credit unions (FICUs). Under the amended rule a FICU with an investment in, or loan to, a CUSO must obtain a written agreement with the CUSO addressing accounting, financial statements, audits, reporting, and legal opinions. The rule limits the ability of a ''less than adequately capitalized'' FICU to recapitalize an insolvent CUSO. All CUSOs are required to annually provide basic profile information to NCUA and the appropriate SSA. CUSOs engaging in certain complex or high-risk activities are also required to report more detailed information, including audited financial statements and customer information. These reporting obligations are imposed on natural person credit union CUSOs and corporate credit union CUSOs as a result of the rule.

Respondents: Federally insured credit unions and credit union service organizations.

Estimated No. of Respondents: 4,116.

Frequency of Response: One-time, on occasion, and annual.

Estimated Burden Hours per Response: Varies based on type and frequency of response.

Estimated Total Annual Burden Hours: 11,558.5 hours.

Estimated Total Annual Cost: $76,177.2.

By the National Credit Union Administration Board on June 30, 2015.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–16497 Filed 7–2–15; 8:45 am]

BILLING CODE 7535–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–58 and CP2015–88; Order No. 2556]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

[1] 12 CFR part 712.

[2] 12 U.S.C. 1756, 1757(5)(D), 1757(7)(I), 1766, 1782, 1785, and 1786.

[3] 78 FR 72537 (Dec. 3, 2013).

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Return Service Contract 9 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 7, 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 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 Parcel Return Service Contract 9 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. MC2015–58 and CP2015–88 to consider the Request pertaining to the proposed Parcel Return Service Contract 9 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 July 7, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–58 and CP2015–88 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd 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 July 7, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–16404 Filed 7–2–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Parcel Return Service Contract 9 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 26, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–87; Order No. 2555]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 7, 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

On June 26, 2015, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, 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 No. CP2015–87 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 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 July 7, 2015. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–87 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than July 7, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–16403 Filed 7–2–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 26, 2015 (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:* July 6, 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 June 26, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Return Service Contract 9 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–58, CP2015–88.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–16426 Filed 7–2–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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:* July 6, 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 June 26, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 127 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–60, CP2015–90.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–16425 Filed 7–2–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Return Service 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:* July 6, 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 June 26, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Return Service Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–59, CP2015–89.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–16427 Filed 7–2–15; 8:45 am]

BILLING CODE 7710–12–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Privacy Act of 1974; System of Records

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is issuing public notice of its intent to amend a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Specifically, RATB–11 entitled ''Oversight Support'' is being amended to reflect one new routine use for information contained in the system and to make various technical corrections and/or clarifications.

DATES: This action will be effective without further notice on August 5, 2015 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments may be submitted:

By Mail or Hand Delivery: Atticus J. Reaser, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By Email to the Board: comments@ratb.gov.

All comments on the proposed amended systems of records should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Atticus J. Reaser, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006, (202) 254–7900.

SUPPLEMENTARY INFORMATION: The Board is amending a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Specifically, RATB–11 entitled ''Oversight Support'' is being amended to reflect one new routine use for information contained in the system to enable the transfer of information to successor data custodians in advance of the Board's termination on September 30, 2015. The Board is also making technical corrections and/or clarifications in other sections, including the security classification, categories of individuals covered by the system, authority for maintenance of system, purpose(s), routine uses, safeguards, system manager, notification procedure, record access procedures, and contesting records procedures. Also for clarity, the Board is adding a separate section specifically addressing exemptions from certain provisions of the Privacy Act; however, the underlying exemptions are not new. In accordance with 5 U.S.C. 552a(r), the Board has provided a report of this amended system of records to the Office of Management and Budget and to Congress. The amended system of records reads as follows:

RATB—11

SYSTEM NAME:

Oversight Support

SECURITY CLASSIFICATION:

Controlled Unclassified Information.

SYSTEM LOCATION:

The principal location of the system is the Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals who relate to official Recovery Accountability and Transparency Board (Board) efforts undertaken in support of its oversight responsibilities reflected in the authorities listed in the Authority for Maintenance of the System section below. These individuals include:

(a) Individuals who are or have been the subject of investigations or inquiries identified by or submitted to the Board;

(b) Individuals who are or have been witnesses, complainants, or informants in investigations or inquiries identified by or submitted to the Board;

(c) Individuals who are or have been potential subjects or parties to an investigation or inquiry identified by or submitted to the Board; and

(d) Individuals who are or have been related to entities or individuals that are or have been a subject of, potential subject of, or party to an investigation or inquiry identified by or submitted to the Board.

The system also contains records concerning individuals in their entrepreneurial capacity, corporations, and other business entities. These records are not subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations and inquiries identified by or submitted to the Board, including:

(a) Letters, memoranda, and other documents describing complaints, derogatory information, or alleged criminal, civil, or administrative misconduct; and

(b) General intelligence and relevant data, leads for Inspectors General (or other applicable oversight and law enforcement entities), reports of investigations and related exhibits, statements and affidavits, and records obtained during an investigation or inquiry.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The American Recovery and Reinvestment Act of 2009, §§ 1521, 1523(a)(1), Pub. L. 111–5, 123 Stat. 115, 289–90 (2009) (Recovery Act), Education Jobs Fund, Pub. L. 111–226, § 101, 124 Stat. 2389 (2010), and Disaster Relief Appropriations Act, 2013, § 904(d), Pub. L. 113–2, 127 Stat. 4, 18 (2013), as well as in accordance with the Board's responsibility to develop and test technology resources and oversight mechanisms to detect and remediate fraud, waste, and abuse in federal spending (*see, e.g.,* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235, 128 Stat. 2130, 2369 (2014)).

PURPOSE(S):

The purpose of this system of records is to enable the Board to carry out its oversight responsibilities under applicable law, including but not necessarily limited to: coordinating with others and conducting oversight to detect and prevent fraud, waste, and abuse of Recovery Act and Education Jobs Fund funds; developing and using information technology resources and oversight mechanisms to detect and remediate waste, fraud and abuse in the obligation and expenditure of funds appropriated for purposes related to the impact of Hurricane Sandy; and developing and testing information technology resources and oversight mechanisms to enhance transparency of and detect and remediate waste, fraud, and abuse in all federal spending for use by the Board and other federal agencies and entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act (5 U.S.C. 552a(b)), the records or information contained in this system of records may specifically be disclosed outside the Board as a routine use pursuant to the Privacy Act (5 U.S.C. 552a(b)(3)) as follows:

A. To the appropriate federal, state, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. To any individual or entity when necessary to elicit information that will assist in a Board review or audit.

C. To appropriate officials and employees of a federal agency or entity that require information relevant to a decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension, or revocation of a security clearance; or the execution of a security or suitability investigation.

D. To provide responses to queries from federal agencies and entities, including but not limited to regulatory and law enforcement agencies, regarding federal fund recipients, subrecipients, or vendors, or those seeking federal funds, when the information is relevant to a determination related to or arising out of a past, present or prospective (i) contract or (ii) grant or other benefit.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

F. Information may be disclosed to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

1. The Board, or any component thereof; or

2. Any employee of the Board in his or her official capacity; or

3. Any employee of the Board in his or her individual capacity where the DOJ or the Board has agreed to represent the employee; or

4. The United States, if the Board determines that litigation is likely to affect the Board or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the Board is deemed by the Board to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Board and who have a need to access the information in the performance of their duties or activities for the Board.

I. To appropriate federal agencies or entities that will act as successor legal and/or physical custodians of the information disclosed from the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored electronically on digital storage devices or as hard copy files. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by database management systems software designed to retrieve data elements based upon role-based user access privileges. Records may be retrieved by personal identifiers such as, but not limited to, name, social security number, date of birth, or telephone number. Records may also be retrieved by non-personal information such as file number, entity/institution name, subject matter, agency involved, or other information.

SAFEGUARDS:

The Board has minimized the risk of unauthorized access to the system by

establishing a secure environment for exchanging electronic information. Physical access to the data system housed within the facility is controlled by Federal Information Processing Standards (FIPS) compliant access controlled systems. The entire complex is patrolled by security during non-business hours. The computer system offers a high degree of resistance to tampering and circumvention and limits data access to Board and contract staff on a need-to-know basis. Individuals' ability to access and alter records within the system is controlled. All users of the system of records are provided a unique user identification (ID) with personal identifiers. User IDs are consistent with the above referenced role-based access privileges to maintain proper security of law enforcement and any other sensitive information. In concert with access controls, audit trails are used to record user and system activity within the system and its associated applications.

Paper records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Board personnel will review records on a periodic basis to determine whether they should be retained or modified. Further, the Board will retain and dispose of these records in accordance with Board Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Executive Director, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above. Note that the major part of this system is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* ''System Exempted from Certain Provisions of the Act'' below.

RECORD ACCESS PROCEDURES:

The major part of this system is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* ''System Exempted from Certain Provisions of the Act'' below. To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked ''Privacy Access Request.'' Include in the request the full name of the individual involved, his or her current address, date and place of birth, notarized signature (or submitted with date and signature under penalty of perjury), and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the System Manager listed above.

CONTESTING RECORDS PROCEDURES:

Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information. Note that the major part of this system is exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). *See* ''System Exempted from Certain Provisions of the Act'' below.

RECORD SOURCE CATEGORIES:

The subjects of investigations and inquiries; individuals and entities with which the subjects of investigations and inquiries are associated; federal, state, local, and foreign law enforcement and non-law enforcement agencies and entities; private citizens; witnesses; informants; and public and/or commercially available source materials.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Board has exempted this system from the following provisions of the Privacy Act pursuant to the general authority in 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G)–(I), (e)(5), and (e)(8); (f); and (g). Additionally, the Board has exempted this system from the following provisions of the Privacy Act pursuant to the general authority in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1) and (e)(4)(G)–(H); and (f).

Dated: June 16, 2015.

Kathleen S. Tighe,

Chair, Recovery Accountability and Transparency Board.

[FR Doc. 2015–16462 Filed 7–2–15; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–Q; OMB Control No. 3235–0578, SEC File No. 270–519.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–Q (17 CFR 249.332 and 274.130) is a reporting form used by registered management investment companies, other than small business investment companies registered on Form N–5 (''funds''), under Section 30(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Pursuant to Rule 30b1–5 under the Investment Company Act, funds are required to file quarterly reports with the Commission on Form N–Q not more than 60 days after the close of the first and third quarters of each fiscal year containing their complete portfolio holdings. Additionally, fund management is required to evaluate the effectiveness of the fund's disclosure controls and procedures within the 90-day period prior to the filing of a report on Form N–Q, and such report must also be signed and certified by the fund's principal executive and financial officers.

We estimate that there are 11,348 funds required to file reports on Form N–Q. Based on staff experience and conversations with industry representatives, we estimate that it takes approximately 26 hours per fund to prepare reports on Form N–Q annually. Accordingly, we estimate that the total annual burden associated with Form N–Q is 295,048 hours (26 hours per fund $\times$ 11,348 funds) per year.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The collection of information under Form N–Q is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 29, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16408 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75326; File No. SR–BX–2015–037]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

June 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 19, 2015, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposal to amend Chapter VI, Section 5 (Minimum Increments) to extend through June 30, 2016 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.[3]

The text of the amended Exchange rule is set forth immediately below.

Proposed new language is *in italics* and proposed deleted language is [bracketed].

NASDAQ OMX BX Rules

Options Rules

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on June 30, [2015]*2016 or the date of permanent approval, if earlier,* if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following *July 1, 2015 and* January 1, [2015]*2016*.

(4) No Change.

(b) No Change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to extend the Penny Pilot through June 30, 2016 or the date of permanent approval, if earlier, and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on June 30, 2015.

[3] The Penny Pilot was established in June 2012 and extended in 2014. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 73689 (November 25, 2014), 79 FR 71488 (December 2, 2014) (SR–BX–2014–057) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2015).

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2016 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2015 and January 1, 2016. The replacement issues will be selected based on trading activity in the previous six months.[4]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional twelve months through June 30, 2016 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2015 and January 1, 2016, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6).[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site. The Exchange proposes in its Penny Pilot rule that replacement issues will be selected based on trading activity in the previous six months. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the July replacement, trading volume from December 1, 2014 through May 30, 2015 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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–BX–2015–037 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–BX–2015–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–037 and should be submitted on or before July 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16416 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75323; File No. SR–NYSEArca–2015–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Rule 6.35 to Modify the Appointment Process Utilized by the Exchange

June 29, 2015.

I. Introduction

On March 20, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 modify the Market Maker appointment and withdrawal process used by the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 8, 2015.[3] On May 21, 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 approve or disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 6.35 to modify the options Market Maker appointment and withdrawal process used by the Exchange. Under the proposal, once an option trading permit (''OTP'') holder has been approved as a Market Maker under Exchange Rule 6.33,[6] the Market Maker would, subject to certain conditions, be permitted to register rather than apply for an appointment in one or more option classes, and would be permitted to select or withdraw option issues included in its appointment using an Exchange-approved electronic interface. The Exchange also proposes to include a Market Maker's available financial resources and operational capability as considerations in its periodic evaluation of Market Maker performance, which factors currently are considered when a Market Maker applies for an appointment.

A. Background

Currently, a registered Market Maker may seek an appointment in one or more option classes pursuant to Rule 6.35. Specifically, Rule 6.35(a) provides that ''[o]n a form or forms prescribed by the Exchange, a Market Maker must apply for an appointment in one or more classes of option contracts.'' [7] In addition to having the authority to appoint one Lead Market Maker (''LMM'') per option class,[8] Rule 6.35(b) provides that ''[t]he Exchange may appoint an unlimited number of Market Makers in each class unless the number of Market Makers appointed to a particular option class should be limited'' based on the Exchange's judgment.[9] Further, current Rule 6.35(c) provides that ''Market Makers may select from among any option issues traded on the Exchange for inclusion in their appointment, subject to the approval of the Exchange.'' [10] In considering the approval of the appointment of a Market Maker in each security, ''the Exchange will consider the Market Maker's preference; the financial resources available to the Market Maker; the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities; the Market Maker's operational capability; and the maintenance and enhancement of competition among Market Makers in each security in which they are appointed.'' [11] Current Rule 6.35 also sets forth the number of OTPs that the Market Maker must have in order to have a specified number of option issues included in the Market Maker's appointment.[12]

Under current Rule 6.35, ''Market Makers may change the option issues in their appointment, subject to the approval of the Exchange,'' provided such requests are ''made in a form and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74635 (April 2, 2015), 80 FR 18909 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 75032, 80 FR 30511 (May 28, 2015).

[6] *See* Rule 6.33 (''Registration of Market Makers''). *See also* Rule 6.32(a) (defining ''Market Maker''). The Exchange is not proposing any changes to Rule 6.33.

[7] *See* Notice, *supra* note 3, at 18909.

[8] *See* Rule 6.82(a)(1) (defining ''LMM''). Any OTP Holder or OTP Firm registered as a Market Maker with the Exchange is eligible to be qualified as an LMM. *Id.* The Exchange is not proposing to change Rule 6.82.

[9] *See* Notice, *supra* note 3, at 18909.

[10] *See id.*

[11] *See id.*

[12] *See id.* For example, 1 OTP affords a Market Maker up to 100 option issues included in their appointment, whereas 4 OTPS would enable a Market Maker to have all option issues traded on the Exchange included in their appointment. *See id.*

manner prescribed by the Exchange.''[13] In addition, ''Market Makers may withdraw from trading an option issue that is within their appointment by providing the Exchange with three business days' written notice of such withdrawal.'' [14] If a Market Maker fails to provide the required notice, the Market Maker ''may be subject to formal disciplinary action pursuant to Rule 10.'' [15] Moreover, the Exchange ''may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchanges' judgment, the interests of a fair and orderly market are best served by such action.'' [16] A Market Maker may seek review of any action taken by the Exchange.[17]

The Exchange periodically evaluates whether Market Makers have fulfilled performance standards, relating to, among other things, quality of markets, competition of Market Makers, observance of ethical standards and administrative factors.[18] If the Exchange finds that a Market Maker has not met the performance standards, the Exchange may take action, including suspending, terminating or restricting a Market Maker's appointment or registration, after providing the Market Maker an opportunity to be heard.[19]

B. Proposed Modifications

The Exchange proposes to modify the current appointment and withdrawal process. Specifically, the Exchange proposes to modify Rule 6.35 to provide that, rather than apply for an appointment, ''a Market Maker may register for an appointment in one or more classes of option contracts,'' in a form and manner prescribed the Exchange.[20] The Exchange would continue to have authority to appoint one LMM per option class.[21] Similarly, an unlimited number of Market Makers could continue to be appointed to an options class, unless the Exchange restricts such appointments following Commission review and approval.[22] The Exchange would retain the ability to suspend or terminate any appointment of a Market Maker if necessary to maintain a fair and orderly market.[23]

In addition, the Exchange proposes to modify Rule 6.35(c) to provide that ''[a] Market Maker may select or withdraw option issues included in their appointment by submitting a request via an Exchange-approved electronic interface with the Exchange on a day when the Exchange is open for business.'' [24] The modified rule would provide that a Market Maker's requested appointment would become effective by no later than the following business day, whereas a Market Maker's request to withdraw option issues from its appointment would not become effective until the following business day.[25] Thus, a Market Maker could be appointed to an option issue on the same day it submits a request to the Exchange, depending on the availability of Exchange resources to process the request that day, but such request, if properly made and received, would be effective no later than the following business day. A Market Maker, however, would not be able to withdraw an option issue from its appointment on the same day that it submits the request; instead, the Exchange would only process such requests on an overnight basis for effectiveness on the following business day. Also, before any changes to a Market Maker's appointment would become effective, the Exchange would be required to confirm that the Market Maker's appointment would not exceed that permitted under paragraph (d) of the rule, pertaining to the number of OTPs a Market Maker would be required to have,[26] and also confirm receipt of the Market Maker's request.[27] According to the Exchange, the confirmation requirement, applicable to requests for additions, changes, and withdrawals, is designed to ensure that the request was properly made and also successfully transmitted to the Exchange.[28] Market Makers would be able to select issues in their appointment or make changes thereto pursuant to proposed Rule 6.35(c) by submitting an email to the Exchange, which is currently ''the Exchange-approved electronic interface.'' [29]

As noted above, paragraph (d) of current Rule 6.35 sets forth the number of OTPs a Market Maker must have in order to have a specified number of option issues included in the Market Maker's appointment. The Exchange recently amended its fee schedule to include this information on its Fee Schedule and therefore is proposing to delete the detailed information set forth in Rule 6.35(d) and instead state that ''[a] Market Maker must have the number of OTPs required under the Fee Schedule for its appointment as a Market Maker in option issues.'' [30]

Proposed Rule 6.35(h) would provide that a Market Maker may seek review of any action taken by the Exchange under Rule 6.35.[31]

Pursuant to current Rule 6.35(j), the Exchange conducts periodic evaluations of Market Makers to determine whether they have fulfilled performance standards. The Exchange proposes to modify Rule 6.35(j)(1) to specify two additional factors it may consider in evaluating whether a Market Maker has fulfilled performance standards pursuant to Rule 6.35(j): (1) The financial resources available to the Market Maker and (2) the Market Maker's operational capability.[32] These factors are currently among the factors the Exchange considers when determining whether to approve a Market Maker's appointment.[33] In connection with the other proposed changes to the Market Maker appointment process, the Exchange proposes that these factors instead be considered as part of the Exchange's periodic evaluation of a Market Maker.

Further, the Exchange proposes to modify Rule 6.35(j)(2) to reflect the proposed changes to the Market Maker appointment process. Specifically, the Exchange proposes to change the reference to a Market Maker being ''re-

[13] *See id.* In considering the change request, the Exchange will consider the factors set forth in Rule 6.35(c). *See id.* at 18909, n.11.

[14] *See* Notice, *supra* note 3, at 18909.

[15] *See* Notice, *supra* note 3, at 18909–10.

[16] *See id.* at 18910.

[17] *See id.* Per Rule 6.35(i), Market Makers are also subject to a trading requirement, such that ''[a]t least 75% of the trading activity of a Market Maker (measured in terms of contract volume per quarter) must be in classes within the Market Maker's appointment. A failure to comply with the 75% contract volume requirement may result in a fine pursuant to Rule 10.12; however, if aggravating circumstances are present, formal disciplinary action may be taken pursuant to Rule 10.4.'' The Exchange is not proposing any changes to Rule 6.35(i).

[18] *See* Notice, *supra* note 3, at 18911, n.34.

[19] *See* Notice, *supra* note 3, at 18910, n.17 (describing current Rule 6.35(j)). If a Market Maker's appointment in an option issue or issues has been terminated pursuant to Rule 6.35(j), the Market Maker may not be re-appointed as a Market Maker in that option issue or issues for a period not to exceed 6 months. *See id.* at 18910, n.17.

[20] *See* proposed Rule 6.35(a). As discussed above, a Market Maker must have the designated number of OTPs set forth in Rule 6.35(d) in order to have a trading appointment on the Exchange. *See* proposed Rule 6.35(d).

[21] *See* proposed Rule 6.35(b).

[22] The Exchange is proposing a conforming change to the text in Rule 6.35(b) to reflect the proposed changes in Rule 6.35(a), to provide that ''[a]n unlimited number of Market Makers may register in each class,'' subject to any limits imposed by the Exchange. *See* proposed Rule 6.35(b).

[23] *See* Rule 6.35(g).

[24] *See* proposed Rule 6.35(c).

[25] *Id.*

[26] *Id.*

[27] *See id.*

[28] *See* Notice, *supra* note 3, at 18910.

[29] The Exchange will announce by Trader Update the email address that Market Makers should utilize to make selections in, or changes to, their appointment pursuant to this Rule. *See* Notice, *supra* note 3, at 18910, n.24.

[30] *See* proposed Rule 6.35(d).

[31] *See* Notice, *supra* note 3, at 18911.

[32] *See* proposed Rule 6.35(j).

[33] *See* Notice, *supra* note 3, at 18911.

appointed'' by the Exchange if an option issue or issues has been terminated pursuant to this subsection (j), and to instead provide that ''the Exchange may restrict the Market Maker's registration as a Market Maker in that option issue or issues for a period not to exceed 6 months.'' [34] The Exchange would retain the discretion to suspend that Market Maker's appointment in the affected option issue(s) for a full six months, or to allow that Market Maker to resume that appointment earlier than the prescribed six-month period, based on the Exchange's evaluation of the facts and circumstances.[35]

Finally, the Exchange proposes certain clarifying technical changes to Rule 6.35 as well as certain conforming changes so that there is consistency throughout the rule text.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act [36] and the rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[38] which requires, among other things, that the Exchange's rules 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to permit an OTP holder approved as a registered Market Maker pursuant to Exchange Rule 6.33 to register for and withdraw from options appointments, subject to the proposed conditions and in accordance with the other provisions of Rule 6.35, is reasonably 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange states that the proposed changes regarding how Market Makers select and modify their appointments would provide Market Makers with more efficient access to the securities in which they want to make markets, enabling them to quickly begin disseminating competitive quotations in those securities which would provide additional liquidity and enhanced competition in those securities on the Exchange.[39] The Exchange notes that the proposed rule change would enable Market Makers to manage their appointments with more flexibility and in a timelier manner, but that Market Makers still will be required to comply with certain obligations to maintain their status as a Market Maker, including that they provide continuous, two-sided quotations in their appointed securities.[40] The Exchange also believes that preventing Market Makers from being able to withdraw an option issue from its appointment on the same day that it submits the request (as such requests, if properly made and received, are processed on an overnight basis for effectiveness the following business day) will serve to promote just and equitable principles of trade and benefit investors and the public interest.[41] Further, before any changes to a Market Maker's appointment become effective, the Exchange will be required to confirm that the Market Maker's appointment will not exceed the number of OTPs a Market Maker is required to have and also will be required to confirm receipt of the Market Maker's request.[42]

The Commission notes that the Exchange has proposed to add a Market Maker's available financial resources and operational capability as factors the Exchange may consider during its periodic evaluation of a Market Maker's performance, stating that these factors are important considerations in evaluating a Market Maker's performance, and that continued consideration of these factors would remove impediments to and perfect the mechanism of a free and open market and would benefit investors and the public interest.[43] The Commission further notes that the Exchange will continue to have authority to suspend or terminate any appointment of a Market Maker in one or more options issues whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.[44] The Exchange will also retain the ability to restrict a Market Maker's registration in option issues for up to six months if a Market Maker's appointment in that option issue or issues has been terminated under the rule, and Rule 6.35 will continue to give the Exchange discretion to allow the Market Maker to resume that appointment earlier than the prescribed six-month period or to maintain the suspension for the entire period. Finally, the Exchange is not proposing changes to the disciplinary and appeals process for Market Makers that do not meet minimum performance standards.[45]

Based on the foregoing, the Commission finds the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[46] that the proposed rule change (SR–NYSEArca–2015–17) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16413 Filed 7–2–15; 8:45 am]

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[34] *See* proposed Rule 6.35(j)(2) (''If a Market Maker's appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Exchange may restrict the Market Maker's registration as a Market Maker in that option issue or issues for a period not to exceed 6 months.'').

[35] *See* Notice, *supra* note 3, at 18911.

[36] 15 U.S.C. 78f.

[37] 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).

[38] 15 U.S.C. 78f(b)(5).

[39] *See* Notice, *supra* note 3, at 18910. In addition, the Exchange notes that other options exchanges permit market makers to select their appointments in a similar manner via exchange-approved electronic interfaces. *See* Notice, *supra* note 3, at 18911, n.28 (*citing* BATS Exchange, Inc. Rule 22.3(b) (''An Options Market Maker may become registered in a series by entering a registration request via an Exchange approved electronic interface with the Exchange's systems by 9:00 a.m. Eastern time. Registration shall become effective on the day the registration request is entered''); and NASDAQ Options Market, Chapter VII, Section 3(b) (''An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.'').

[40] *See* Notice, *supra* note 3, at 18910.

[41] *See id.* at 18912.

[42] *See* text accompanying notes 26–27 *supra.*

[43] *See* Notice, *supra* note 3, at 18912.

[44] *See* Rule 6.35(g). *See also* Notice, *supra* note 3, at 18912, n.40 and Rule 6.33 (regarding the Exchange's ability to suspend or terminate a Market Maker's registration based on ''a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rules 6.37, 6.37A or 6.37B,'' which outline the obligations of Market Makers).

[45] *See* Notice, *supra* note 3, at 18912.

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75322; File No. SR–NYSEMKT–2015–17]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending Rule 923NY to Modify the Appointment Process Utilized by the Exchange

June 29, 2015.

I. Introduction

On March 20, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Market Maker appointment and withdrawal process used by the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 8, 2015.[3] On May 21, 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 approve or disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 923NY to modify the options Market Maker appointment and withdrawal process used by the Exchange. Under the proposal, once an Amex trading permit (''ATP'') holder has been approved as a Market Maker under Exchange Rule 9.21NY,[6] the Market Maker would, subject to certain conditions, be permitted to register rather than apply for an appointment in one or more option classes, and would be permitted to select or withdraw option issues included in its appointment using an Exchange-approved electronic interface. The Exchange also proposes to include a Market Maker's available financial resources and operational capability as considerations in its periodic evaluation of Market Maker performance, which factors currently are considered when a Market Maker applies for an appointment.

A. Background

Currently, a registered Market Maker may seek an appointment in one or more option classes pursuant to Rule 923NY. Specifically, Rule 923NY provides that ''[o]n a form or forms prescribed by the Exchange, a Market Maker must apply for an appointment in one or more classes of option contracts.'' [7] In addition to having the authority to appoint one Specialist per option class and to designate e-Specialists to fulfill certain obligations required of Specialists,[8] Rule 923NY(b) provides that ''[t]he Exchange may appoint an unlimited number of Market Makers in each class unless the number of Market Makers appointed to a particular option class should be limited'' based on the Exchange's judgment.[9] Further, current Rule 923NY(c) provides that ''Market Makers may select from among any option issues traded on the Exchange for inclusion in their appointment, subject to the approval of the Exchange.'' [10] In considering the approval of the appointment of a Market Maker in each security, ''the Exchange will consider the Market Maker's preference; the financial resources available to the Market Maker; the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities; the Market Maker's operational capability; and the maintenance and enhancement of competition among Market Makers in each security in which they are appointed.'' [11] Current Rule 923NY also states that, in order to have a trading appointment on the Exchange, Market Makers must have the number of ATPs required under the Amex Options Fee Schedule.[12] In addition, Floor Market Makers [13] must also apply for appointment to a Trading Zone [14] on the floor, subject to approval by the Exchange.[15]

Under current Rule 923NY, ''Market Makers may change the option issues in their appointment, subject to the approval of the Exchange,'' provided such requests are ''made in a form and manner prescribed by the Exchange.'' [16] In addition, ''Market Makers may withdraw from trading an option issue that is within their appointment by providing the Exchange with three business days' written notice of such withdrawal.'' [17] If a Market Maker fails to provide the required notice, the Market Maker ''may be subject to formal disciplinary action pursuant to Section 9A of the Office Rules.'' [18] Moreover, the Exchange ''may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchanges' judgment, the interests of a fair and orderly market are best served by such action.'' [19] A Market Maker may seek review of any action taken by the Exchange.[20]

The Exchange periodically evaluates whether Market Makers have fulfilled performance standards, relating to, among other things, quality of markets, competition of Market Makers, observance of ethical standards and administrative factors.[21] If the Exchange finds that a Market Maker has not met the performance standards, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74636 (April 2, 2015), 80 FR 18884 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 75033, 80 FR 30519 (May 28, 2015).

[6] *See* Rule 921NY (''Registration of Market Makers''). *See also* Rule 920NY(a) (defining ''Market Maker''). The Exchange is not proposing any changes to Rule 921NY.

[7] *See* Notice, *supra* note 3, at 18885.

[8] *See* Rule 900.2 NY(76) (defining ''Specialist''). Any ATP Holder registered as a Market Maker with the Exchange is eligible to be qualified as a Specialist. *See id.* Rule 923NY(b) also provides that ''[t]he Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY[e-Specialists].'' *See* Rule 923NY(b). The Exchange is not proposing to change Rule 923NY(b) regarding Specialists and e-Specialists.

[9] *See* Notice, *supra* note 3, at 18885.

[10] *See id.*

[11] *See* Notice, *supra* note 3, at 18885.

[12] *See* Notice, *supra* note 3, at 18885. *See also* NYSE Amex Options Fee Schedule (Section III.A., Monthly ATP Fees) (describing ''Number Of Issues Permitted In A Market Makers Quoting Assignment'' based on the number of permits held and the associated costs), *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[13] *See* Rule 900.2NY(29) (defining ''Floor Market Maker'').

[14] A Trading Zone refers to the areas on the Floor designated by the Exchange in which issues are assigned for the purposes of open outcry trading. *See* Rule 900.2NY(83).

[15] *See* Notice, *supra* note 3, at 18885. The current rule also provides that Specialists shall be appointed to the Trading Zone designated for their issues. *See id.* at 18885, n.13.

[16] *See* Notice, *supra* note 3, at 18885. In considering the change request, the Exchange will consider the factors set forth in Rule 923NY(c). *See id.*

[17] *See* Notice, *supra* note 3, at 18885.

[18] *See id.*

[19] *See id.*

[20] *See id.* Per Rule 923NY(i), Market Makers are also subject to a trading requirement, such that ''[a]t least 75% of the trading activity of a Market Maker (measured in terms of contract volume per quarter) must be in classes within the Market Maker's appointment and, in the case of Floor Market Makers, within their designated Trading Zone. A failure to comply with the 75% contract volume requirement may result in a fine pursuant to Rule 476A, however if aggravating circumstances are present, formal disciplinary action may be taken pursuant to Rule 9A.'' The Exchange is not proposing any changes to Rule 923NY(i).

[21] *See* Rule 923NY(j).

Exchange may take action, including suspending, terminating or restricting a Market Maker's appointment or registration, after providing the Market Maker an opportunity to be heard.[22]

B. Proposed Modifications

The Exchange proposes to modify the current appointment and withdrawal process. Specifically, the Exchange proposes to modify Rule 923NY(a) to provide that, rather than apply for an appointment, ''a Market Maker may register for an appointment in one or more classes of option contracts,'' in a form and manner prescribed the Exchange.[23] The Exchange would continue to have authority to appoint one Specialist per option class and to designate e-Specialists in option classes to fulfill certain obligations required of Specialists.[24] Similarly, an unlimited number of Market Makers could continue to be appointed to an options class, unless the Exchange restricts such appointments following Commission review and approval.[25] The Exchange would retain the ability to suspend or terminate any appointment of a Market Maker if necessary to maintain a fair and orderly market.[26]

In addition, the Exchange proposes to modify Rule 923NY(c) to provide that ''[a] Market Maker may select or withdraw option issues included in their appointment by submitting a request via an Exchange-approved electronic interface with the Exchange on a day when the Exchange is open for business.'' [27] The modified rule would provide that a Market Maker's requested appointment would become effective by no later than the following business day, whereas a Market Maker's request to withdraw option issues from its appointment would not become effective until the following business day.[28] Thus, a Market Maker could be appointed to an option issue on the same day it submits a request to the Exchange, depending on the availability of Exchange resources to process the request that day, but such request, if properly made and received, would be effective no later than the following business day. A Market Maker, however, would not be able to withdraw an option issue from its appointment on the same day that it submits the request; instead, the Exchange would only process such requests on an overnight basis for effectiveness on the following business day. Also, before any changes to a Market Maker's appointment would become effective, the Exchange would be required to confirm that the Market Maker's appointment would not exceed that permitted under paragraph (d) of the rule, pertaining to the number of ATPs a Market Maker would be required to have,[29] and also confirm receipt of the Market Maker's request.[30] According to the Exchange, the confirmation requirement, applicable to requests for additions, changes, and withdrawals, is designed to ensure that the request was properly made and also successfully transmitted to the Exchange.[31] Market Makers would be able to select issues in their appointment or make changes thereto pursuant to proposed Rule 923NY(c) by submitting an email to the Exchange, which is currently ''the Exchange-approved electronic interface.'' [32]

Proposed Rule 923NY(h) would provide that a Market Maker may seek review of any action taken by the Exchange under Rule 923NY.[33]

Pursuant to current Rule 923NY(j), the Exchange conducts periodic evaluations of Market Makers to determine whether they have fulfilled performance standards. The Exchange proposes to modify Rule 923NY(j) to specify two additional factors it may consider in evaluating whether a Market Maker has fulfilled performance standards pursuant to Rule 923NY(j): (1) The financial resources available to the Market Maker and (2) the Market Maker's operational capability.[34] These factors are currently among the factors the Exchange considers when determining whether to approve a Market Maker's appointment.[35] In connection with the other proposed changes to the Market Maker appointment process, the Exchange proposes that these factors instead be considered as part of the Exchange's periodic evaluation of a Market Maker.

Further, the Exchange proposes to modify Rule 923NY(j)(2) to reflect the proposed changes to the Market Maker appointment process. Specifically, the Exchange proposes to change the reference to a Market Maker being ''re-appointed'' by the Exchange if an option issue or issues has been terminated pursuant to this subsection (j), and to instead provide that ''the Exchange may restrict the Market Maker's registration as a Market Maker in that option issue or issues for a period not to exceed 6 months.'' [36] The Exchange would retain the discretion to suspend that Market Maker's appointment in the affected option issue(s) for a full six months, or to allow that Market Maker to resume that appointment earlier than the prescribed six-month period, based on the Exchange's evaluation of the facts and circumstances.[37]

Finally, the Exchange proposes certain clarifying technical changes to Rule 923NY as well as certain conforming changes so that there is consistency throughout the rule text.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act [38] and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[40] which requires, among other things, that the Exchange's rules 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

[22] *See* Notice, *supra* note 3, at 18886, n.20 (describing current Rule 923NY(j)(2)) (''If a Market Maker's appointment in an option issue or issues has been terminated pursuant to Rule 923NY(j)), the Market Maker may not be re-appointed as a Market Maker in that option issue or issues for a period not to exceed 6 months.'').

[23] *See* proposed Rule 923NY(a). As discussed above, a Market Maker must have the designated number of ATPs set forth in the Amex Options Fee Schedule in order to have a trading appointment on the Exchange. *See* proposed Rule 923NY(d).

[24] *See* proposed Rule 923NY(b).

[25] The Exchange is proposing a conforming change to the text in Rule 923NY(b) to reflect the proposed changes in Rule 923NY(a), to provide that ''[a]n unlimited number of Market Makers may register in each class,'' subject to any limits imposed by the Exchange. *See* proposed Rule 923NY(b).

[26] *See* Rule 923NY(g).

[27] *See* proposed Rule 923NY(c).

[28] *Id.*

[29] *Id.* The Exchange proposed certain clarifying and conforming changes to Rule 923NY(d) to make it consistent with other changes discussed herein. *See* Notice, *supra* note 3, at 18886–87.

[30] *See* proposed Rule 923NY(c).

[31] *See* Notice, *supra* note 3, at 18886.

[32] The Exchange will announce by Trader Update the email address that Market Makers should utilize to make selections in, or changes to, their appointment pursuant to this Rule. *See* Notice, *supra* note 3, at 18886, n.27.

[33] *See* Rule 923NY(h). *See also* Notice, *supra* note 3, at 18887.

[34] *See* proposed Rule 923NY(j).

[35] *See* Notice, *supra* note 3, at 18887.

[36] *See* proposed Rule 923NY(j)(2) (''If a Market Maker's appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Exchange may restrict the Market Maker's registration as a Market Maker in that option issue or issues for a period not to exceed 6 months.''). *See also* Notice, *supra* note 3, at 18887.

[37] *See* Notice, *supra* note 3, at 18887.

[38] 15 U.S.C. 78f.

[39] 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).

[40] 15 U.S.C. 78f(b)(5).

and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to permit an ATP holder approved as a registered Market Maker pursuant to Exchange Rule 921NY to register for and withdraw from options appointments, subject to the proposed conditions and in accordance with the other provisions of Rule 923NY, is reasonably 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange states that the proposed changes regarding how Market Makers select and modify their appointments would provide Market Makers with more efficient access to the securities in which they want to make markets, enabling them to quickly begin disseminating competitive quotations in those securities which would provide additional liquidity and enhanced competition in those securities on the Exchange.[41] The Exchange notes that the proposed rule change would enable Market Makers to manage their appointments with more flexibility and in a timelier manner, but that Market Makers still will be required to comply with certain obligations to maintain their status as a Market Maker, including that they provide continuous, two-sided quotations in their appointed securities.[42] The Exchange also believes that preventing Market Makers from being able to withdraw an option issue from its appointment on the same day that it submits the request (as such requests, if properly made and received, are processed on an overnight basis for effectiveness the following business day) will serve to promote just and equitable principles of trade and benefit investors and the public interest.[43] Further, before any changes to a Market Maker's appointment become effective, the Exchange will be required to confirm that the Market Maker's appointment will not exceed the number of ATPs a Market Maker is required to have and will also be required to confirm receipt of the Market Maker's request.[44]

The Commission notes that the Exchange has proposed to add a Market Maker's available financial resources and operational capability as factors the Exchange may consider during its periodic evaluation of a Market Maker's performance, stating that these factors are important considerations in evaluating a Market Maker's performance, and that continued consideration of these factors would remove impediments to and perfect the mechanism of a free and open market and would benefit investors and the public interest.[45] The Commission further notes that the Exchange will continue to have authority to suspend or terminate any appointment of a Market Maker in one or more option issues whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.[46] The Exchange will also retain the ability to restrict a Market Maker's registration in option issues for up to six months if a Market Maker's appointment in that option issue or issues has been terminated under the rule, and Rule 923NY will continue to give the Exchange discretion to allow the Market Maker to resume that appointment earlier than the prescribed six-month period or to maintain the suspension for the entire period. Finally, the Exchange is not proposing changes to the disciplinary and appeals process for Market Makers that do not meet minimum performance standards.[47]

Based on the foregoing, the Commission finds the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that the proposed rule change (SR–NYSEMKT–2015–17) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16412 Filed 7–2–15; 8:45 am]

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[41] *See* Notice, *supra* note 3, at 18887. In addition, the Exchange notes that other options exchanges permit market makers to select their appointments in a similar manner via exchange-approved electronic interfaces. *See* Notice, *supra* note 3, at 18886, n.31(*citing,* BATS Exchange, Inc. Rule 22.3(b) (''An Options Market Maker may become registered in a series by entering a registration request via an Exchange approved electronic interface with the Exchange's systems by 9:00 a.m. Eastern time. Registration shall become effective on the day the registration request is entered''); and NASDAQ Options Market Chapter VII, Section 3(b) (''An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.'').

[42] *See* Notice, *supra* note 3, at 18888.

[43] *See* Notice, *supra* note 3, at 18887.

[44] *See* text accompany notes 29–30 *supra.*

[45] *See* Notice, *supra* note 3, at 18887.

[46] *See* Rule 923NY(g). *See also* Notice, *supra* 3, at 18888, n.43 and Rule 921NY (regarding the Exchange's ability to suspend or terminate a Market Maker's registration based on ''a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rules 925NY or 923NY,'' which outline the obligations of Market Makers).

[47] *See* Notice, *supra* note 3, at 18887.

[48] 15 U.S.C. 78s(b)(2).

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75320; File No. SR–ICEEU–2015–009]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to Finance Procedures To Add Clearstream Banking as a Triparty Collateral Service Provider

June 29, 2015.

On May 5, 2015, ICE Clear Europe Limited (''ICEEU'') 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 modify the Finance Procedures to allow Clearstream Banking to serve as a triparty collateral service provider for initial or original margin provided in respect of all product categories, including CDS Contracts. The proposed rule change was published for comment in the **Federal Register** on May 15, 2015.[3] To date, the Commission has not received comments 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 from the publication of notice of filing of this proposed rule change is June 29, 2015. The Commission is extending this 45-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–74922 (May 11, 2015), 80 FR 28035 (May 15, 2015) (File No. SR–ICEEU–2015–009).

[4] 15 U.S.C. 78s(b)(2).

day time period. In order to provide the Commission with sufficient time to consider the proposed rule change, the Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 13, 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–ICEEU–2015–009).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16410 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31698]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 26, 2015.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2015. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 21, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

First Trust Floating Rate High Income Fund [File No. 811–22510]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on June 17, 2015.

Applicant's Address: 120 East Liberty Drive, Suite 400, Wheaton, IL 60187.

BlackRock Pennsylvania Strategic Municipal Trust [File No. 811–9417]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to BlackRock MuniYield Pennsylvania Quality Fund, and effective April 13, 2015, made distributions to its shareholders based on net asset value. Expenses of approximately $297,589 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on June 11, 2015.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Campbell Multi-Strategy Trust [File No. 811–21803]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 23, 2015, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant has retained approximately $2,416,000 in cash and cash equivalent reserves to cover potential outstanding liabilities in the amount of $2,416,421. Any reserves not required to pay such liabilities will be distributed to shareholders. Expenses of approximately $76,289 incurred in connection with the liquidation were paid by shareholders.

Filing Date: The application was filed on June 24, 2015.

Applicant's Address: 2850 Quarry Lake Dr., Baltimore, MD 21209.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16409 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75321; File No. SR–CBOE–2015–059]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

June 29, 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 June 15, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. 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

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Fees Schedule. Specifically, the Exchange proposes to amend fees for Qualified Contingent Cross (''QCC'') transactions. A QCC order is comprised of an order to buy or sell at least 1,000 contracts (or 10,000 mini-option contracts) that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts. Currently, the Exchange assesses no fee for Customer (''C'' origin) QCC transactions and $0.20 per contract side for Clearing Trading Permit Holder Proprietary (''F'' or ''L'' origin code) QCC transactions, as well as Broker-Dealer, Non-Trading Permit Holder Market Maker, Professional/Voluntary Professional and Joint Back-Office QCC transactions. Additionally, Market-Maker QCC transactions are subject to the Liquidity Provider Sliding Scale. In lieu of the current QCC transaction fees stated above, the Exchange proposes to establish a transaction fee for all non-customer QCC orders of $0.15 per contract side (customer orders will continue to not be assessed a charge). In addition, the Exchange proposes to adopt a $0.10 per contract credit for the initiating order side, regardless of origin code. The Exchange proposes to explicitly provide in the Fees Schedule that a QCC transaction is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts and that for complex QCC transactions, the 1,000 contracts minimum is applied per leg. The 'initiating order' is considered to be the agency side of a QCC order. The Exchange notes that with regard to order entry, the first order submitted into the system is marked as the initiating/agency side and the second order is marked as the contra side. The credit will be paid to the Trading Permit Holder that enters the order into the system. The purpose of these changes is to incentivize the sending of QCC orders to the Exchange. The Exchange notes that another Exchange similarly provides rebates on QCC initiating orders.[3] The Exchange also notes that no changes to transaction fees for QCC mini-option orders are being proposed at this time.

Finally, the Exchange proposes to eliminate references to QCC fees in the Equity, ETF and ETN options rate tables, and instead establish a QCC-specific rate table. No substantive changes, other than those mentioned above, are being made by the reorganization and relocation of QCC-related transaction fees. Rather, the Exchange believes the proposed change will make the Fees Schedule easier to read and alleviate potential confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation 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 Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed transaction fee for QCC orders is reasonable because the proposed amount is in line with the amount assessed at other Exchanges for similar transactions.[7] Additionally, the proposed fee would be charged to all non-customers alike. Assessing QCC rates to all market participants except customers is equitable and not unfairly discriminatory because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. By exempting customer orders, the QCC transaction fees will not discourage the sending of customer orders.

The Exchange believes the $0.10 per contract credit for the initiating order side of a QCC transaction is reasonable because another Exchange also provides a rebate on the initiating order side.[8] Additionally, the proposed credit amount is within the range of the rebate amounts at the other Exchange.[9] The Exchange believes the proposed credit is equitable and not unfairly discriminatory because it applies to all Trading Permit Holders that enter the initiating order, regardless of origin code and because it is intended to incentivize the sending of more QCC orders to the Exchange. Clarifying in the Fees Schedule that (i) a QCC transaction is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts, (ii) for complex QCC transactions, the 1,000 contracts minimum is applied per leg and (iii) the 'initiating order' is considered to be the agency side of a QCC order informs market participants and alleviates potential confusion. Clarifying that the credit will be paid to the Trading Permit Holder that enters the order into the system also alleviates confusion. The alleviation of potential confusion thereby removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Finally, the Exchange believes reorganizing and relocating QCC related transaction fees (and credits) makes the Fees Schedule easier to read and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

[3] *See* International Securities Exchange, LLC (''ISE'') Schedule of Fees, Section IV(A), QCC and Solicitation Rebate, which provides for rebates between $0.05 per QCC contract and $0.11 per QCC contract for each originating contract side based upon meeting certain volume thresholds.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] *See e.g.,* NYSE Arca, Inc. (''Arca'') Options Fees Schedule, Qualified Contingent Cross Transaction Fees and NASDAQ OMX PHLX LLC (''PHLX'') Pricing Schedule, Section II, Multiply Listed Options Fees.

[8] *See* ISE Schedule of Fees, Section IV(A), QCC and Solicitation Rebate.

[9] *Id.*

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, because the proposes rule change applies to all Trading Permit Holders. The Exchange believes this proposal will not cause an unnecessary burden on intermarket competition because the proposed changes will actually enhance the competiveness of the Exchange relative to other exchanges which offer comparable fees and rebates for QCC transactions.[10] To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] 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–2015–059 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–2015–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–059 and should be submitted on or before July27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16411 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

[10] *See e.g.* , ISE Schedule of Fees, Section IV(A), QCC and Solicitation Rebate and PHLX Pricing Schedule, Section II, Multiply Listed Options Fees.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75329; File No. SR–ICEEU–2015–012]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Delivery Procedures

June 29, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] notice is hereby given that on June 16, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rules 19b–4(f)(4)(i) and (ii) [4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes amendments to its Delivery Procedures with respect to the settlement of certain European emissions allowance and cocoa futures contracts that are currently traded on ICE Futures Europe and cleared by ICE Clear Europe. The proposed rule change also makes certain clarifications and updates to the Complaint Resolution Procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i) and (ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the ICE Clear Europe Delivery Procedures for certain emissions allowance and cocoa futures contracts traded on ICE Futures Europe and cleared by ICE Clear Europe, namely the ICE Futures EUA Futures Contract, ICE Futures EUA Daily Futures Contract, ICE Futures EUAA Auction Contract, ICE Futures EUAA Futures Contract, ICE Futures EUAA Auction Contract, ICE Futures CER Futures Contract, ICE Futures CER Futures Daily Contract and ICE Futures ERU Futures Contract (collectively, the ''Emissions Contracts''), and Financials & Softs Cocoa Futures Contracts (the ''Cocoa Contracts''). ICE Clear Europe also proposes to make certain clarifications and updates to its Complaint Resolution Procedures. ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures.

The amendments to the Delivery Procedures relating to the Emissions Contracts adjust the deadlines for certain actions in connection with delivery under those contracts, including the timing of submission of Transfer Requests by the relevant Seller or the Clearing House, the timing of receipt of emissions allowances by the Clearing House and the Buyer, and the timing of submission of certain confirmation forms. The timing changes are intended to move certain aspects of the settlement process earlier in the day, in order to facilitate orderly settlement. The amendments also remove certain superfluous language prior to the beginning of Part A of the Delivery Procedures.

The amendments to the Delivery Procedures for the Cocoa Contracts clarify the reports made available to Buyers and Sellers in the event there are no conversions of delivery units to be made under relevant exchange rules. Specifically, Sellers will have access to an account sale report and delivery details via Guardian or any successor system. Buyers will have access to an invoice report and delivery details.

A correction is also made in the Delivery Procedures to a reference to a report provided in connection with the delivery of Swiss Government Bond Futures Contracts.

The amendments to the Complaint Resolution Procedures eliminate an unnecessary reference to different categories of Clearing Members and update contact details for making a complaint.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, and is consistent with the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[6] The changes to the Delivery Procedures for the Emissions Contracts and Cocoa Contracts are intended to clarify the timing of certain requirements and update certain notice and report procedures. As such, ICE Clear Europe believes that the proposed rule change will generally enhance the operation of its physical settlement processes for these contracts. ICE Clear Europe is not otherwise changing its financial resources, risk management, systems and operational arrangements that support clearing of these contracts (and address physical delivery under these contracts). The changes to the Complaint Resolution Procedure consist of non-substantive clarifications. The proposed rule change is thus consistent with the prompt and accurate clearance and settlement of derivative agreements, contracts and transactions, and with the requirements of Section 17A of the Act.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the Act. ICE Clear Europe is adopting the amendments to the Delivery Procedures to clarify certain timing requirements in connection with physical delivery under Emissions Contracts, and to clarify certain other documentation requirements for Emissions Contracts and Cocoa Contracts. ICE Clear Europe does not believe that these operational changes will impose any significant additional costs on Clearing Members or other market participants or otherwise adversely affect Clearing Members or market participants. In particular, the changes are not expected to affect access to clearing in these products for Clearing Members or their customers. The changes will apply to all Clearing Members clearing transactions in the products, and accordingly are not expected to affect competition among Clearing Members or the market for clearing services generally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and Rule 19b–4(f)(4)(i) and (ii) [9] thereunder. The Delivery Procedure Amendments effect a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. The Complaint Resolutions Procedures amendments do not adversely affect the safeguarding of funds or securities in the custody or control of ICE Clear Europe or for which it is responsible, and further do not significantly affect the rights and obligations of ICE Clear Europe or persons using its clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(i) and (ii).

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–ICEEU–2015–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/notices/clear-europe/regulation.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2015–012 and should be submitted on or before July 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16417 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75325; File No. SR–BYX–2015–29]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.9 of BATS Y-Exchange, Inc., To Modify its Price Adjust Functionality

June 29, 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 June 16, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9 to modify the Exchange's Price Adjust functionality, as described below.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers various forms of sliding, which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible (''single display-price sliding''), and optionally continually re-prices an order (''multiple display-price sliding'') based on changes in the national best bid (''NBB'') or national best offer (''NBO'', and together with the NBB, the ''NBBO''). The Exchange proposes to modify one form of price sliding offered by the Exchange, the Price Adjust process, as described below, in order to align more closely with the Exchange's other form of price sliding, the display-price sliding process.

The Exchange's display-price sliding functionality is designed to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book''). Specifically, when the Exchange receives an incoming order designated with a display-price sliding instruction that could execute against resting displayed liquidity on the BATS Book, it will execute against such liquidity. However, when an execution against resting displayed liquidity does not occur because an incoming order is designated as an order that will not remove liquidity (*i.e.,* a BATS Post Only Order), then the Exchange will cancel the incoming order. In contrast to display-price sliding, which is based solely on Protected Quotations [3] at external markets other than the Exchange, Price Adjust is currently based on Protected Quotations at external markets and at the Exchange. Under the Price Adjust process, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in BYX Rule 1.5(t), a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.''

accordance with Rules 11.9(c)(6) and (c)(7), respectively,[4] or would be adjusted pursuant to the Price Adjust process. The Exchange proposes to modify the Price Adjust process so that it is applicable only with respect to quotations of external markets, which, as noted above, is how the display-price sliding process currently operates on the Exchange.

As proposed, under the Price Adjust process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market will be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). However, as is true for the current display-price sliding process, the Price Adjust process would not adjust the price of a BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross an order displayed by the Exchange but rather, would either execute [5] or cancel such order upon entry. Further, to the extent the NBBO changes such that a BATS Post Only Order subject to the Price Adjust process would be ranked at a price at which it could remove displayed liquidity from the BATS Book, the order will be executed as set forth in Rule 11.9(c)(6) or cancelled.

As an example of the Price Adjust process, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.11 per share. Assume the NBBO is $10.10 by $10.11, which includes an offer of $10.11 displayed by at least one other market. The Exchange notes that under its current pricing structure, which pays a rebate to orders that remove liquidity and charges a fee to orders that add liquidity, all orders (including BATS Post Only Orders and Partial Post Only at Limit Orders) that would lock or cross liquidity resting on the Exchange would remove liquidity on entry pursuant to Rule 11.9(c)(6). However, the Exchange has included the examples below in order to demonstrate how the proposed functionality would operate in the event the Exchange has a different pricing structure that does not allow the incoming BATS Post Only Order to remove liquidity upon entry.

- Under the current functionality, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will rank and display the order to buy at $10.10 because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets).
- As proposed, however, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will cancel the order back because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets) and the Exchange's Price Adjust functionality would no longer price slide past a displayed order resting on the Exchange.
- Assume however, that all facts are the same as the immediately preceding example except that the Exchange's best offer is displayed at $10.12. Because an incoming Post Only bid to buy 100 shares at $10.11 could be displayed by the Exchange but would lock the Protected Quotation of one or more external markets at that price, the Exchange would re-price and display the order to buy at $10.10.

In addition to the change proposed above, the Exchange proposes to correct two aspects of the Exchange's current rule regarding the display-price sliding process. First, the Exchange proposes to modify Rule 11.9(g)(1)(D), which states that ''any'' display-eligible BATS Post Only Order or Partial Post Only at Limit order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Because an order can also be subject to the Price Adjust process or no price sliding option at all, the Exchange proposes to instead start this provision with ''depending on User instructions.'' The Exchange proposes to use this same language in the proposed revision to Rule 11.9(g)(2)(D) with respect to Price Adjust. Second, the Exchange proposes to modify the cross-reference at the end of Rule 11.9(g)(2)(D) from 11.9(c)(7) to 11.9(c)(6) to accurately refer to the rule applicable to BATS Post Only Orders.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') [6] and further the objectives of Section 6(b)(5) of the Act [7] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed change to Price Adjust is consistent with Section 6(b)(5) of the Act,[9] as well as Rule 610 of Regulation NMS [10] and Rule 201 of Regulation SHO.[11] The Exchange is not modifying the overall functionality of Price Adjust, which is designed to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions. Instead, the Exchange is proposing changes to Price Adjust to more closely mirror the display-price sliding process, such that neither form of price sliding functionality adjusts the price of an order to avoid locking or crossing an order displayed by the Exchange, and instead, such an order will either be cancelled or executed by the Exchange. As noted above, in contrast to display-price sliding, which is based solely on Protected Quotations of external markets, the Price Adjust process is currently based on Protected Quotations at external markets and at the Exchange.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [12] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS

[4] The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. *See* Rule 11.9(c)(7). The Exchange notes that all BATS Post Only Orders remove liquidity from the BATS Book based on the Exchange's current pricing structure, which provides a rebate to remove liquidity and charges a fee to add liquidity.

[5] *See id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 242.610.

[11] 17 CFR 242.201.

[12] 17 CFR 242.610(d).

stock.'' [13] The Price Adjust process, as amended will continue to assist Users by displaying orders at permissible prices or rejecting them if the Exchange has displayed liquidity that would preclude their display. Similarly, Rule 201 of Regulation SHO [14] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate the same for Users of Price Adjust as it does for Users that select the display-price sliding process offered by the Exchange.

Thus, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such incoming order will execute against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled. The Exchange believes that it is reasonable and consistent with the Act to cancel orders on entry that cannot executed or displayed at their limit price because this is consistent with display-price sliding functionality. Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange also reiterates that the proposed change to the Price Adjust process will continue to enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is being proposed as minor modification to functionality offered by the Exchange that will ensure that the Exchange's Price Adjust process is consistent with the display-price sliding process offered by the Exchange today.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [15] and paragraph (f)(6) of Rule 19b–4 thereunder.[16] The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BYX–2015–29 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–BYX–2015–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–BYX–2015–29, and should be submitted on or before July 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16415 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

[13] *Id.*

[14] 17 CFR 242.201.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

[17] The Exchange has fulfilled this requirement.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75324; File No. SR–BATS–2015–47]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9 of BATS Exchange, Inc., To Modify its Price Adjust Functionality

June 29, 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 June 16, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9 to modify the Exchange's Price Adjust functionality, as described below.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers various forms of sliding, which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible (''single display-price sliding''), and optionally continually re-prices an order (''multiple display-price sliding'') based on changes in the national best bid (''NBB'') or national best offer (''NBO'', and together with the NBB, the ''NBBO''). The Exchange proposes to modify one form of price sliding offered by the Exchange, the Price Adjust process, as described below, in order to align more closely with the Exchange's other form of price sliding, the display-price sliding process.

The Exchange's display-price sliding functionality is designed to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book''). Specifically, when the Exchange receives an incoming order designated with a display-price sliding instruction that could execute against resting displayed liquidity on the BATS Book, it will execute against such liquidity. However, when an execution against resting displayed liquidity does not occur because an incoming order is designated as an order that will not remove liquidity (*i.e.,* a BATS Post Only Order), then the Exchange will cancel the incoming order. In contrast to display-price sliding, which is based solely on Protected Quotations [3] at external markets other than the Exchange, Price Adjust is currently based on Protected Quotations at external markets and at the Exchange. Under the Price Adjust process, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively,[4] or would be adjusted pursuant to the Price Adjust process. The Exchange proposes to modify the Price Adjust process so that it is applicable only with respect to quotations of external markets, which, as noted above, is how the display-price sliding process currently operates on the Exchange.

As proposed, under the Price Adjust process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market will be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). However, as is true for the current display-price sliding process, the Price Adjust process would not adjust the price of a BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross an order displayed by the Exchange but rather, would either execute [5] or cancel such order upon entry. Further, to the extent the NBBO changes such that a BATS Post Only Order subject to the Price Adjust process would be ranked at a price at which it could remove displayed liquidity from the BATS Book, the order will be executed as set forth in Rule 11.9(c)(6) or cancelled.

As an example of the Price Adjust process, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.11 per share. Assume the NBBO is $10.10 by $10.11, which includes an offer of $10.11 displayed by at least one other market.

• Under the current functionality, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will rank and display the order to buy at $10.10 because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in BATS Rule 1.5(t), a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.''

[4] The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. *See* Rule 11.9(c)(7).

[5] *See id.*

• As proposed, however, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will cancel the order back because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets) and the Exchange's Price Adjust functionality would no longer price slide past a displayed order resting on the Exchange.

• Assume however, that all facts are the same as the immediately preceding example except that the Exchange's best offer is displayed at $10.12. Because an incoming Post Only bid to buy 100 shares at $10.11 could be displayed by the Exchange but would lock the Protected Quotation of one or more external markets at that price, the Exchange would re-price and display the order to buy at $10.10.

In addition to the change proposed above, the Exchange proposes to correct two aspects of the Exchange's current rule regarding the display-price sliding process. First, the Exchange proposes to modify Rule 11.9(g)(1)(D), which states that ''any'' display-eligible BATS Post Only Order or Partial Post Only at Limit order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Because an order can also be subject to the Price Adjust process or no price sliding option at all, the Exchange proposes to instead start this provision with ''depending on User instructions.'' The Exchange proposes to use this same language in the proposed revision to Rule 11.9(g)(2)(D) with respect to Price Adjust. Second, the Exchange proposes to modify the cross-reference at the end of Rule 11.9(g)(2)(D) from 11.9(c)(7) to 11.9(c)(6) to accurately refer to the rule applicable to BATS Post Only Orders.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') [6] and further the objectives of section 6(b)(5) of the Act [7] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of section 11A(a)(1) [8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed change to Price Adjust is consistent with section 6(b)(5) of the Act,[9] as well as Rule 610 of Regulation NMS [10] and Rule 201 of Regulation SHO.[11] The Exchange is not modifying the overall functionality of Price Adjust, which is designed to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions. Instead, the Exchange is proposing changes to Price Adjust to more closely mirror the display-price sliding process, such that neither form of price sliding functionality adjusts the price of an order to avoid locking or crossing an order displayed by the Exchange, and instead, such an order will either be cancelled or executed by the Exchange. As noted above, in contrast to display-price sliding, which is based solely on Protected Quotations of external markets, the Price Adjust process is currently based on Protected Quotations at external markets and at the Exchange.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [12] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS stock.'' [13] The Price Adjust process, as amended will continue to assist Users by displaying orders at permissible prices or rejecting them if the Exchange has displayed liquidity that would preclude their display. Similarly, Rule 201 of Regulation SHO [14] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate the same for Users of Price Adjust as it does for Users that select the display-price sliding process offered by the Exchange.

Thus, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such incoming order will execute against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled. The Exchange believes that it is reasonable and consistent with the Act to cancel orders on entry that cannot executed or displayed at their limit price because this is consistent with display-price sliding functionality. Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange also reiterates that the proposed change to the Price Adjust process will continue to enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is being proposed as minor modification to functionality offered by the Exchange that will ensure that the Exchange's Price Adjust process is consistent with the display-price sliding process offered by the Exchange today.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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

The Exchange has designated this rule filing as non-controversial under section 19(b)(3)(A) of the Act [15] and paragraph (f)(6) of Rule 19b–4 thereunder.[16] The

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 242.610.

[11] 17 CFR 242.201.

[12] 17 CFR 242.610(d).

[13] *Id.*

[14] 17 CFR 242.201.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of this filing.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that BATS may implement the proposed rule change immediately. The Exchange has represented that it has alerted its Members of the proposed change [18] and that those currently utilizing Price Adjust functionality would not need to make any system changes in connection with the proposed change. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will align the display-price sliding functionality and Price Adjust functionality and help harmonize the Exchange's rulebook. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–47 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–BATS–2015–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–BATS–2015–47, and should be submitted on or before July 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–16414 Filed 7–2–15; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.19b–4(f)(6).

[18] *See* BATS Trade Desk Notice dated May 19, 2015, ''BATS Update to Post Only Price Adjust Logic Effective Friday, June 19, 2015 on BZX,'' available at *www.batstrading.com/alerts* under Release Notes.

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14359 and #14360]

Nebraska Disaster #NE–00065

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4225–DR), dated 06/25/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/06/2015 through 06/17/2015.

Effective Date: 06/25/2015.

Physical Loan Application Deadline Date: 08/24/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 03/25/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2015, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cass, Dundy, Gage, Jefferson, Lancaster, Lincoln, Morrill, Nuckolls, Otoe, Saline, Saunders, Thayer.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere.	2.625
Non-Profit Organizations Without Credit Available Elsewhere.	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere.	2.625

The number assigned to this disaster for physical damage is 14359B and for economic injury is 14360B.
(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administratorfor Disaster Assistance.

[FR Doc. 2015–16428 Filed 7–2–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Docket ID No. SBA–2015–0009]

Small Business Investment Companies—Request for Comments on Credit and Risk Management Issues

AGENCY: U.S. Small Business Administration.

ACTION: Notice and request for comments.

SUMMARY: The Small Business Administration (SBA) has identified two issues that potentially affect SBA's ability to make recoveries from a small business investment company (SBIC) that performs poorly and poses a credit risk to SBA. The Agency seeks public input on how SBA should address its credit concerns regarding these two issues: SBICs with unsecured lines of credit, and the determination of ''equity capital investments'' when calculating an SBIC's capital impairment percentage.

DATES: Comments must be received on or before September 4, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. SBA–2015–0009, at *www.regulations.gov.* Comments may only be submitted at this web address; follow the instructions on the Web site for submitting comments. All comments received will be included in the public docket without change and will be available online at *www.regulations.gov.* All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive information and information that you consider to be Confidential Business Information or otherwise protected should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Lyn Womack, Office of Investment and Innovation, 409 Third St. SW., Washington, DC 20416, (202) 205–2416.

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBIC Program was established under the Small Business Investment Act of 1958. 15 U.S.C. 661 *et seq.* (the ''Act''). SBICs are privately owned and professionally managed investment funds, licensed and regulated by SBA, that use privately-raised capital to make equity and debt investments in qualifying small businesses. SBICs may be leveraged or non-leveraged. Leveraged SBICs use privately raised capital plus funds borrowed by issuing debentures guaranteed by SBA to make such qualifying investments. Only SBICs with outstanding debenture leverage pose a credit risk to SBA, and SBA's request for input in this notice is limited to this type of SBIC. SBA does not anticipate any changes to the regulations as a result of this notice, but will consider changes to the policy guidance that interprets the regulations.

SBICs are governed by Title 13, Part 107 in the Code of Federal Regulations (13 CFR part 107) which may be found at *www.gpo.gov/fdsys/pkg/CFR-2014-title13-vol1/xml/CFR-2014-title13-vol1-part107.xml.* SBA also issues supplemental guidance through various publications which may be found at *www.sba.gov/sbicpolicy.*

II. Areas of Concern

SBA is seeking public input on the following areas of concern:

1. *Unsecured Lines of Credit.* The Act provides that SBA ''(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and (2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.'' 15 U.S.C. 683(c). Pursuant to 13 CFR 107.550, a leveraged SBIC must obtain SBA's prior written approval before it incurs any secured third-party debt. In practice, SBA rarely approves secured third-party debt facilities because the collateral for such debt consists of the same assets SBA relies on to protect its creditor position. SBA approval is not required for unsecured third-party debt, though the Agency may review the related loan agreement(s) in connection with its oversight, including examinations, of the SBIC.

Leveraged SBICs commonly use unsecured lines of credit. Although permitted by the regulations without SBA prior approval, all such credit facilities pose a potential credit risk to SBA because, with certain limited exceptions set forth under 13 CFR 107.560, the Agency is subordinated to the first $10 million of such debt. Furthermore, SBA is concerned that many such credit facilities contain certain provisions that may increase SBA's credit risk. SBA is specifically concerned about provisions that, upon a default (which may include events other than a payment default; for example, failure by more than a certain number of investors in the SBIC to fund a capital call within a stated period), allow a lender to make a capital call directly on the SBIC's investors and use the proceeds to repay the line of credit. Similarly, SBA is concerned about provisions that permit a lender to compel the SBIC's General Partner to make a capital call, together with remedies including specific performance and/or injunctive relief. If an SBIC defaults on its leverage and is transferred by SBA to a liquidation status in accordance with the SBIC's leverage terms, the SBIC's remaining commitments are a significant source of capital that SBA relies upon for repayment of the SBIC's leverage. However, such commitments will not be available to SBA if they have already been called to satisfy a default under the SBIC's unsecured credit facility. SBA has also observed that some SBICs use these lines on a short-term basis to fund investments, while others maintain outstanding balances on a longer-term basis for working capital or other purposes.

SBA is seeking comments as to how the Agency can best address its credit concerns while continuing to permit SBICs to utilize unsecured lines of credit. Among other things, SBA is seeking input from the public with regard to the following questions:

(a) What credit concerns should SBA have regarding an SBIC's credit facility if the maximum extension of credit under such a facility is in the amount of $10 million or less?

(b) How frequently, or what percent of total dollars or lines of credit, do lenders provide unsecured credit to SBICs in an amount above $10 million?

(c) What are the typical maturity dates for such credit facilities (*e.g.,* 12 month term) and are they routinely extended?

(d) What is the average balance and settlement of credit lines extended to SBICs?

(e) Based on SBA's view that short-term borrowings pose a lower credit risk, what restrictions, if any, should SBA consider placing on the length of time a balance may remain outstanding on an unsecured line?

(f) Should SBA permit such facilities only during time periods of an SBIC's lifecycle when the risk to SBA is lower, for example during the early years of the SBIC's life or before additional leverage is drawn? If so, what considerations should SBA take into account in determining the timing and duration of these periods?

(g) Are there certain provisions in unsecured loan agreements that SBA should be especially concerned about with respect to credit risk (*e.g.,* remedies available to a lender such as specific performance or injunctive relief) and how should SBA deal with those provisions?

(h) What type of credit risk policies would be most effective in managing SBA's credit risk with respect to unsecured lines of credit?

2. *Determination of Equity Capital Investments (ECI) in the calculation of an SBIC's maximum allowable Capital Impairment Percentage (CIP).* 13 CFR 107.1830(c) defines the maximum allowable CIP for a leveraged SBIC that is not an Early Stage SBIC. If an SBIC exceeds its maximum allowable CIP, it constitutes a condition of Capital Impairment, which is an event of default under the terms of its leverage. 13 CFR 107.1810(f)(5). An SBIC's maximum allowable CIP depends on two variables: (1) the percentage at cost of ECI in the SBIC's portfolio, and (2) the ratio of outstanding leverage to Leverageable Capital.

Under 13 CFR 107.50, ECI generally means investments in a small business in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Further, Leverageable Capital means, as more fully described in 13 CFR 107.50, paid-in capital of an SBIC.

SBA's regulations permit a higher maximum allowable CIP when the percentage of ECI in an SBIC's portfolio is higher in recognition that equity-type investment strategies are inherently riskier and frequently require a longer holding period relative to debt investments before a successful exit can be achieved.

SBA has observed over the last few years that SBICs seeking to avoid Capital Impairment have converted non-ECI investments to ECI solely for the purpose of attaining an increase in maximum allowable CIP. For example, an SBIC can convert a loan into equity, which would cause the investment to then qualify as ECI. Depending on the circumstances of the SBIC, the converted security could cause the SBIC's maximum allowable CIP to increase and artificially forestall the SBIC from having a condition of Capital Impairment, which creates risk to taxpayers.

SBA has also observed the deteriorating performance of portfolio companies held in a particular SBIC can likewise result in an SBIC's maximum allowable CIP increasing. Using the example in the prior paragraph, the loan could have been converted to equity as a result of a distressed restructuring of the company. In either case, the increased ECI was not the result of the SBIC making an ECI investment from the outset, but instead converting non-ECI based on the impairment status of the SBIC or the deteriorated status of a small concern.

SBA aims to prevent conversions specifically and solely intended to artificially increase maximum allowable CIP, because such conversions result in the SBIC having a reduced collateral position in the portfolio company at a time when that collateral may be critical for SBA to obtain a recovery from the SBIC. However, in considering any policy changes to managing its credit risk with respect to ECI, SBA does not seek to create unnecessary burdens for SBICs who may convert an investment to ECI for business reasons unrelated to solely avoiding Capital Impairment (*e.g.,* the exercise of conversion rights prior to a planned IPO). Accordingly, the Agency welcomes comments from the public on how to achieve this objective. Comments may be general in nature and/or answer the following questions:

(a) Other than the examples provided in this notice, what transactions or circumstances can result in an original non-ECI becoming qualified as an ECI?

(b) What specific factors should SBA consider in determining that investments are disqualified as ECI for the purposes of calculating an SBIC's maximum allowable CIP?

(c) Without creating an undue reporting burden on SBICs, how can SBA differentiate between investments converted for legitimate business reasons and those converted for other reasons, including solely to inflate total ECI in the SBIC's portfolio?

Authority: 15 U.S.C. 681.

Javier Saade,

Associate Administrator for Investment and Innovation.

[FR Doc. 2015–16430 Filed 7–2–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14334 and #14335]

Texas Disaster Number TX–00447

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4223–DR), dated 05/29/2015.

Incident: Severe Storms, Tornadoes, Straight-Line Winds and Flooding.

Incident Period: 05/04/2015 through 06/19/2015.

Effective Date: 06/24/2015.

Physical Loan Application Deadline Date: 07/28/2015.

EIDL Loan Application Deadline Date: 02/29/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of TEXAS, dated 05/29/2015 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Fayette.

Contiguous Counties: (Economic Injury Loans Only):

Texas; Colorado; Lavaca; Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–16429 Filed 7–2–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2014–0051]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA))—Match Number 1309

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on April 01, 2015.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L.100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA)

A. PARTICIPATING AGENCIES

SSA and VA/VBA

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of this matching program is to provide us with VA compensation and pension payment data. This disclosure will provide us with information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable us to identify individuals who may qualify for Extra Help as part of our Medicare outreach efforts.

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

The legal authority for VA to disclose information under this agreement is 1631(f) of the Social Security Act (Act) (42 U.S.C. 1383(f)). The legal authorities for us to conduct this computer matching are 1860D–14(a)(3), 1144(a)(1), and 1144(b)(1) of the Act (42 U.S.C. 1395w–114 and 1320b–14).

D. CATEGORIES OF RECORDS AND PERSONS COVERED BY THE MATCHING PROGRAM

1. SYSTEMS OF RECORDS

VA will provide us with electronic files containing compensation and pension payment data from its system of records (SOR) entitled ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records–VA'' (58VA/21/22/28), republished with updated name at 74 FR 14865 (April 1, 2009) and last amended at 77 FR 42593 (July 19, 2012).

We will match the VA data with our SOR 60–0321, Medicare Database (MDB), last published at 71 FR 42159 (July 25, 2006).

2. NUMBER OF RECORDS

VA's data file will consist of approximately 4.9 million electronic records. Our comparison file contains approximately 90 million records obtained from the MDB. The number of people who apply for Extra Help determines in part the number of records matched.

3. SPECIFIED DATA ELEMENTS

We will conduct the match using the Social Security number, name, date of birth, and VA claim number on both the VA file and the MDB.

4. FREQUENCY OF MATCHING

VA will furnish us with an electronic file containing VA compensation and pension payment data monthly. The actual matching will take place approximately the first week of every month.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The effective date of this matching program is April 02, 2015 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2015–16433 Filed 7–2–15; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of a GSP Product Review, Including Possible Actions Related to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of hearing and solicitation of petitions and comments.

SUMMARY: This notice announces a review of products under the Generalized System of Preferences (GSP) program that based on full-year 2014 import data, are subject to certain actions related to competitive need limitations (CNLs). The review will also consider the proposed designation for GSP eligibility of five cotton products from least developed beneficiary developing countries (LDBDCs).

The Office of the United States Trade Representative (USTR) will accept petitions by interested parties seeking waivers of CNLs for certain products submitted by July 31, 2015. USTR will also accept comments from the public submitted by July 31, 2015, regarding: (1) Possible *de minimis* CNL waivers, (2) possible redesignations of articles not currently eligible for GSP benefits, (3) possible revocation of CNL waivers, and (4) the proposed designation for GSP eligibility for LDBDCs of the five cotton products. This notice also sets forth the schedule for submitting comments and for a public hearing on prospective CNL waiver petitions and the proposed designation of the cotton products.

DATES:

July 31, 2015: Deadline for petitions requesting waivers of CNLs and for all other written comments in response to this notice.

July 31, 2015: Deadline for pre-hearing briefs and requests to appear at the August 11 public hearing regarding CNL waiver petitions and the proposed designation of the cotton products.

August 11, 2015: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) will convene a public hearing on CNL waiver petitions and the proposed designation of the cotton products.

August 18, 2015: Deadline for submission of post-hearing briefs and comments.

FOR FURTHER INFORMATION CONTACT: Marin Weaver, GSP Program, Office of the United States Trade Representative. The telephone number is (202) 395–2974, the fax number is (202) 395–9674, and the email address is *MWeaver@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (''the 1974 Act''). The GSP program expired on July 31, 2013. GSP was reauthorized on June 29, 2015, by the Trade Preferences Extension Act of 2015. The GSP program is now effective through December 31, 2017, with retroactive effect through July 31, 2013.

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. When the President determines that a BDC exported to the United States during a calendar year either: (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($165 million for 2014), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent'' CNL), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year, unless a waiver is granted. The Trade Preferences Extension Act of 2015 provides that the applicable deadline for all CNL-related actions based on import data from 2014, will be October 1, 2015.

De minimis waivers: Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($22 million for 2014).

Redesignations: Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

CNL waiver revocation: Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432, also provides that, ''[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for five years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year ($247.5 million in 2012); or (II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.''

Pursuant to the Trade Preferences Extension Act of 2015, exclusions from GSP duty-free treatment where CNLs have been exceeded for calendar year 2014 will be effective October 1, 2015, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and redesignations will be based on full 2014 calendar year import data.

II. 2014 Import Statistics

In order to provide notice of articles that have exceeded the CNLs for 2014 and to afford an opportunity for comment regarding (1) potential *de minimis* waivers, (2) potential redesignations, and (3) the potential revocation of waivers for articles exceeding the CNL waiver thresholds for 2014, USTR has posted product lists on the USTR Web site at *https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0* under the title ''GSP: 2014/2015 Limited Product Review.'' These lists can also be found at *www.regulations.gov* in Docket Number USTR–2015–0007. Full 2014 calendar year data for individual tariff subheadings may also be viewed on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov*.

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff System (HTS) of the United States subheading and BDC country of origin, the value of imports of the article from the subject BDC for the 2014 calendar year, and that country's share of total U.S. imports of that article.

List I on the USTR Web site shows the following two GSP-eligible articles—both from Thailand—that exceeded a CNL in 2014 by having been exported in a quantity equal to or greater than 50 percent of the total U.S. import value, in 2014:

- HTS 2008.19.15—Coconuts otherwise prepared or preserved; and
- HTS 7408.29.10—Copper alloys (other than brass, cupro-nickel or nickel-silver), wire, coated or plated with metal

These products will be removed from eligibility for GSP for the subject countries on October 1, 2015, unless the President grants a waiver for the product for Thailand in response to a petition filed by an interested party.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent

CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without the filing of a petition.

List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment but that may be considered for GSP redesignation based on 2014 trade data and consideration of certain statutory factors.

List IV shows the following three articles from specified BDCs that are subject to CNL waiver revocation based on the provisions of Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432:

- HTS 4412.31.40—(for Indonesia) Certain plywood sheets not over 6 mm thick;
- HTS 7413.00.10—(for Turkey) Certain copper, stranded wire;
- HTS 7413.00.50—(for Turkey) Certain copper cables and plaited bands.

Petitions from interested parties seeking a waiver of the application of CNLs for the two products on List I, and comments from the public in support of or in opposition to CNL waivers, revocations of CNL waivers, and redesignation of products are invited in accordance with the Requirements for Submissions below.

III. Possible Designation of New Products

Pursuant to authority granted to the President in Section 202 of the Trade Preferences Extension Act of 2015 and consistent with USTR's December 2011 announcement of trade initiatives intended to enable least-developed countries to benefit more fully from global trade, five cotton products are being considered for GSP eligibility for LDBDCs at the initiative of USTR. These include:

- HTS 5201.00.18, 5201.00.28, and 5201.00.38—Certain cotton, not carded or combed, of various specified staple lengths
- HTS 5202.99.30—Certain cotton card strips made from cotton waste; and
- HTS 5203.00.30—Certain cotton fibers, carded or combed.

Comments from the public in support of or in opposition to designation of the proposed product additions are invited in accordance with the Requirements for Submissions below.

IV. Petitions and Public Comments

The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a notice published in the **Federal Register**. The schedule for the 2015 GSP Annual Review will be notified at a later date in the **Federal Register**.

In the interim, and pursuant to Section 203 of the Trade Preferences Extension Act of 2015, the GSP Subcommittee of the TPSC will conduct a limited GSP review encompassing products that, based on full-year 2014 import data, are subject to CNL-related actions, including exclusions, waivers, and revocation of waivers, as well as redesignations. These products appear on Lists I—IV described above. In addition, the review will also consider the designation of the five cotton products mentioned above as eligible for GSP benefits for LDBDCs of the GSP program.

As part of this limited GSP product review, the GSP Subcommittee will accept petitions from interested parties seeking a waiver of the application of CNLs for the two products on List I, described above. The GSP Subcommittee also invites comments in support of or in opposition to: (1) The CNL waiver petitions which it is anticipated will be submitted for the two products on List I; (2) *de minimis* waivers of CNLs (see List II); (3) redesignations of products that were previously excluded from certain countries based on CNLs (see List III); (4) revocation of CNL waivers (see List IV); and (5) the proposed addition to GSP eligibility for LDBDCs only of the five cotton products listed above.

Procedures for submission of both petitions and written comments are described in Section VI below.

V. Notice of Public Hearing

In addition to comments from the public on the matters listed above, the GSP Subcommittee of the TPSC will convene a public hearing at 9:30 a.m. on Tuesday, August 11, 2015, to receive testimony related to (1) the CNL waiver petitions for products on List I, and (2) the proposed designation of the five cotton products. The hearing will not address *de minimis* waivers, product redesignations, or CNL waiver revocations.

The hearing will be held at 1724 F Street NW., Washington, DC 20508 and will be open to the public and to the press. A transcript of the hearing will be made available on *http://www.regulations.gov* within approximately two weeks of the hearing.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' set out below, the name, address, telephone number, and email address, if available, of the witness(es) representing their organization by 5 p.m., Friday, July 31, 2015. Requests to present oral testimony must be accompanied by a written brief or summary statement, in English, and also must be received by 5 p.m., Friday, July 31, 2015. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the requirements set out below and are submitted, in English, by 5 p.m., Tuesday, August 18, 2015. Parties not wishing to appear at the public hearing may submit pre-hearing and post-hearing briefs or comments by the aforementioned deadlines.

VI. Requirements for Submissions

Written comments submitted in response to this notice, including petitions for CNL waivers, must be submitted electronically by 5:00 p.m., July 31, 2015, using *www.regulations.gov*, docket number USTR–2015–0007. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Comments must be submitted in English to the Chairman of the GSP Subcommittee of the TPSC.

For CNL waiver petitions only: CNL waiver petitions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*. Any person or party submitting a CNL waiver petition is strongly advised to review the GSP regulations as well as the GSP Guidebook, which is available at the same link. The requirements for CNL waiver petitions do not apply to other written submissions in response to this notice.

To make a written comment or to submit a CNL waiver petition using *http://www.regulations.gov*, enter the docket number for this review—USTR–2015–0007—in the ''Search for'' field on the 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 ''Notice'' under ''Document Type'' in the ''Filter Results by'' section on the left side of the screen and click on the link entitled ''Comment Now.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a

document using the ''Upload file(s)'' field. The GSP Subcommittee prefers that submissions be provided in an attached document. At the beginning of the submission, or on the first page (if an attachment), please note that the submission is in response to this **Federal Register** notice and indicate the specific product(s) that is the subject of the comment and on which of the relevant lists described above, (*e.g.,* List I) it appears. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov*. The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If an interested party is unable to provide submissions as requested, please contact the GSP program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

An interested party requesting that information contained in a submission be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. For any submission containing business confidential information, a non-confidential version must be submitted separately (*i.e.,* not as part of the same submission with the confidential version), indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing. Such submissions may be viewed by entering the country-specific docket number in the search field at *http://www.regulations.gov*.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2015–16498 Filed 7–2–15; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Final Environmental Assessment (Final EA), Finding of No Significant Impact (FONSI), and Record of Decision (ROD) for the Houston Spaceport, City of Houston, Harris County, Texas

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

ACTION: Notice of Availability of the Final EA and FONSI/ROD.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 United States Code 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations parts 1500 to 1508), and FAA Order 1050.1E, Change 1, *Environmental Impacts: Policies and Procedures,* the FAA is announcing the availability of the Final EA and FONSI/ROD for the Houston Spaceport.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Suite 325, Washington DC 20591; phone (202) 267–5924; or email *Daniel.Czelusniak@faa.gov.*

SUPPLEMENTARY INFORMATION: The Final EA was prepared to analyze the potential environmental impacts of Houston Airport System's (HAS's) proposal to establish and operate a commercial space launch site at the Ellington Airport (EFD), in Houston, Texas and offer the site to prospective commercial space launch operators for the operation of horizontal take-off and horizontal landing Concept X and Concept Z reusable launch vehicles (RLVs). To operate a commercial space launch site, HAS must obtain a commercial space launch site operator license from the FAA. Under the Proposed Action addressed in the Final EA, the FAA would: (1) Issue a launch site operator license to HAS for the operation of a commercial space launch site at EFD; (2) issue launch licenses to prospective commercial space launch operators that would allow them to conduct launches of horizontal take-off and horizontal landing Concept X and Concept Z RLVs from EFD, and (3) provide unconditional approval to the Airport Layout Plan (ALP) modifications that reflect the designation of a spaceport boundary and construction of planned spaceport facilities and infrastructure. Proposed launch operations would begin in 2015 and continue through 2019 in accordance with the terms of the launch site operator license. HAS proposes to provide RLV operators the ability to conduct up to 50 launches and landings (or 100 operations) per year, with approximately five percent of the operations expected to occur during night-time hours.

The Final EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative. Under the No Action Alternative, the FAA would not issue a launch site operator license to HAS, and thus no launch licenses would be issued to individual commercial space launch vehicle operators to operate at EFD. Also, there would be no need to update the EFD ALP, and thus there would be no FAA approval of a revised ALP. Existing operations would continue at EFD, which is currently classified as a general aviation reliever airport.

The environmental impact categories considered in the Final EA include air quality; climate; coastal resources; compatible land use; Department of Transportation Act: Section 4(f); fish, wildlife, and plants; floodplains; hazardous materials, pollution prevention, and solid waste; historical, architectural, archaeological, and cultural resources; light emissions and visual impacts; natural resources and energy supply; noise; socioeconomics, environmental justice, and children's environmental health and safety risks; water quality; and wetlands. The Final EA also considers the potential secondary (induced) impacts and cumulative impacts.

The FAA has posted the Final EA and FONSI/ROD on the FAA Office of Commercial Space Transportation Web site: *http://www.faa.gov/about/*

office_org/headquarters_offices/ast/environmental/nepa_docs/review/operator/.

The FAA published a Notice of Availability (NOA) of the Draft EA in the **Federal Register** on December 31, 2014. The NOA was also published in the Houston Chronicle on January 7, 2015, and in the Bay Area Citizen, Pasadena Citizen, Friendswood Journal, and Pearl Journal on January 8, 2015. An electronic version of the Draft EA was also made available on the FAA Web site. In addition, the FAA printed and mailed a copy of the Draft EA to the following libraries: Clear Lake City-County Freeman Branch Library, Friendswood Public Library, Alvin Library, Hitchcock Public Library, and Reagan County Library. The FAA held an open house public meeting on January 22, 2015 from 5:30 p.m. to 8:30 p.m. at the Space Center Houston, Silvermoon Conference Room. The public comment period ended on January 31, 2015. Public comments on the Draft EA resulted in minor changes to the EA.

Issued in Washington, DC on June 24, 2015.

Daniel Murray,

Manager, Space Transportation Development Division.

[FR Doc. 2015–16464 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–39]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 27, 2015.

ADDRESSES: You may send comments identified by docket number FAA–2014–0661 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148; or Sandra Long, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov,* phone (202) 267–4714.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 26, 2015.

Brenda D. Cortney,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2014–0661
Petitioner: The Boeing Company
Section of 14 CFR Affected:

14 CFR 25.979(d) and (e)

Description of Relief Sought:

The petitioner requests relief from the use of industry standard pressures for onloads and offloads installations of the 767–2C modified supplemental type certificate (STC) to ensure consistency within the current military fleet. The baseline 767–2C aircraft will be modified to be an in-flight tanker and receiver. The onload and offload installations could experience surge pressures that approach 240 pounds per square inch gage (PSIG). The baseline 767–2C aircraft designed to the maximum burst pressure of 360 PSIG will not meet the regulatory requirement of 2.0 times the ultimate load at maximum pressures, including surge.

[FR Doc. 2015–16495 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–38]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before July 16, 2015.

ADDRESSES: You may send comments identified by docket number FAA–2014–1042 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.

• Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148; or Sandra K. Long, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov,* phone (202) 267–4714.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 26, 2015.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–1042

Petitioner: The Boeing Company

Section of 14 CFR Affected: 14 CFR 25.981(a)(3)

Description of Relief Sought: The petitioner seeks an exemption from the requirements of Amendment 25–125, in accordance with FAA Policy PS–ANM–25.981–02 dated June 24, 2014, with respect to fuel tank ignition prevention for 737–7, 737–8, and 737–9 airplanes.

[FR Doc. 2015–16494 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2015–0084]

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review; Request for Comments on a New Information Collection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

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 March 26, 2015.

DATES: Comments must be submitted on or before August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Wayne McKenzie, Office of Crash Avoidance Standards (NVS–121), National Highway Traffic Safety Administration, West Building W43–462, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. McKenzie can be reached at (202) 366–1729.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR Section 571.108, Compliance Labeling of Retroreflective Materials Heavy Trailer Conspicuity.

OMB Control Number: 2127–0569.

Type of Request: Extension of a currently approved collection.

Abstract: Federal Motor Vehicle Safety Standard No. 108, ''Lamps, reflective devices, and associated equipment,'' specifies requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic results by providing adequate roadway illumination, improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. For certifications and identification purposes, the Standard requires the permanent marking of the letters ''DOT–C2,'' DOT–C3'', or DOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity.

The manufacturers of new tractors and trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Motor Carriers Safety Administration (FMCSA) enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing trailer conspicuity grade material from lower performance material. Without labeling, FMCSA will not be able to enforce the performance requirements of the standard and the compliance testing of new tractors and trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them certify compliance. Because wider stripes or material of lower brightness also can provide the minimum safety performance, the marking system serves the additional role of identifying the minimum stripe width required for retroreflective conspicuity of the particular material.

Affected Public: Businesses or other for profit organizations.

Estimated Number of Respondents: 6.

Estimated Number of Responses: 6.

Annual Estimated Total Annual Burden Hours: 1 hour.

Frequency of Collection:

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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2015–16402 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0139; Notice 1]

Aston Martin Lagonda Limited, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Aston Martin Lagonda Limited (AML) has determined that certain MY 2009–2013 Aston Martin passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* AML has filed an appropriate report dated November 4, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is August 5, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to: 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 Deliver: Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- Electronically: Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. AML's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, AML submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of AML's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 3,282 of the following AML model passenger cars manufactured from September 2009 through October 2013:

Model	Registered AMLNA fleet	Dealer un-registered	Build range
DB9 Coupe	211	41	10/09–10/13
DB9 Volante	225	53	10/09–10/13
DBS Coupe	153	1	10/09–08/12
DBS Volante	147	1	10/09–08/12
Virage Coupe	120	0	12/10–08/12
Virage Volante	156	0	12/10–08/12
V8 Vantage Coupe	385	54	10/09–10/13
V8 Vantage Roadster	279	56	10/09–10/13
V8 Vantage S Coupe	170	9	06/10–10/13
V8 Vantage S Roadster	122	12	06/10–10/13
Rapide	671	0	09/09–02/13
Rapide S	74	65	01/13–10/13
Vanquish Coupe	197	80	09/12–10/13
Total	2,910	372	N/A

III. Noncompliance: AML explains that during testing of the TPMS it was noted that the fitment of an incompatible wheel and tire unit was correctly detected and the malfunction indicator illuminated as required by FMVSS No. 138. However, when the vehicle ignition was deactivated and then reactivated after a five minute period, there was no immediate re-illumination of the malfunction indicator as required when the malfunction still exists. Although the malfunction indicator does not re-illuminate immediately after the vehicle ignition is reactivated, it does illuminate within 40 seconds after the vehicle accelerates above 23 mph.

Rule Text: Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected. . . .

V. Summary of AML's Analyses: AML stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) AML stated that although the malfunction indicator does not re-illuminate immediately after the vehicle is restarted, it generally will illuminate shortly thereafter, and in any event it will illuminate in no more than about 40 seconds, even in vehicles containing the noncompliance. Once a vehicle has started and is accelerating above 23 mph for a period of 15 seconds, the TPMS will seek to confirm the sensors fitted to the vehicle. If a sensor is not fitted, the TPMS will detect this within a further period of 15–20 seconds (up to a maximum of 25 seconds) and the TPMS malfunction indicator will illuminate correctly. Once the malfunction indicator is illuminated, it will remain illuminated throughout that ignition cycle, regardless of the vehicle's speed.

(B) AML also stated that if the TPMS fails to detect the wheel sensors, the TPMS monitor will display on the TPMS pressures screen ''—'' warning the driver that the status of the wheel sensor is unconfirmed. Once the vehicle starts moving, the system will then accurately determine if a sensor is present or not.

(C) AML says that the noncompliance is confined to one particular aspect of the functionality of the otherwise compliant TPMS malfunction indicator. All other aspects of the low-pressure monitoring system functionality are fully compliant with the requirements of FMVSS No. 138.

(D) AML is not aware of any customer complaints, field communications, incidents or injuries related to this condition.

AML has additionally informed NHTSA that all unsold vehicles in AML's custody and control will have the TPMS Electronic Control Unit reprogrammed prior to being sold.

In summation, AML believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt AML from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that AML no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after AML notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–16439 Filed 7–2–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities: Statutory Licensing and Consolidation Authority

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of approval for the information collections required from those seeking licensing authority under 49 U.S.C. 10901–03 and consolidation authority under §§ 11323–26.

Under these Title 49 provisions, rail carriers and non-carriers are required to file an application with the Board, or seek an exemption (through petition or notice) from the full application process under § 10502, before they may construct, acquire, or operate a line of railroad; abandon or discontinue operations over a line of railroad; or consolidate their interests through a merger or common-control arrangement. The relevant information collections are described in more detail below.

Comments are requested concerning: The accuracy of the Board's burden estimates; 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, when appropriate; and whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Title: Statutory Licensing and Consolidation Authority.

OMB Control Number: 2140–0023.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Rail carriers and non-carriers seeking statutory licensing or consolidation authority or an exemption from filing an application for such authority.

Number of Respondents: 64.[1]

Frequency: On occasion.

TABLE—NUMBER OF RESPONSES IN FY 2011

Type of filing	Number of filings under 49 U.S.C. 10901–03 and 11323–26
Applications	2
Petitions *	18
Notices *	103

* Under § 10502, petitions for exemption and notices of exemption are permitted in lieu of an application.

Total Burden Hours (annually including all respondents): 4,049 hours (sum total of estimated hours per response × number of responses for each type of filing).

[1] Approximately 40% of the filings were additional filings submitted by railroads that had already submitted filings during the time period. Therefore, the number of respondents (64) is approximately 40% less than the number of filings (106).

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response under 49 U.S.C. 10901–03 and 11323–26
Applications	524
Petitions *	58
Notices *	19

* Under § 10502, petition for exemptions and notices of exemption are permitted in lieu of an application.

Total ''Non-hour Burden'' Cost (such as filing fees): None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), persons seeking to construct, acquire or operate a line of railroad and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement are required to file an application for prior approval and authority with the Board. *See* 49 U.S.C. 10901–03 and 11323–26. Under 49 U.S.C. 10502, persons may seek an exemption from many of the application requirements of §§ 10901–03 and 11323–26 by filing with the Board a petition for exemption or notice of exemption in lieu of an application. The collection by the Board of these applications, petitions, and notices enables the Board to meet its statutory duty to regulate the referenced rail transactions. *See Table—Statutory and Regulatory Provisions* below.

Retention Period: Information in these collections is maintained by Board for 10 years, after which it is transferred to the National Archives as permanent records.

DATES: Comments on this information collection should be submitted by September 4, 2015.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.dot.gov.* When submitting comments, please refer to ''Statutory Licensing and Consolidation Authority.'' For further information regarding this collection, contact *PRA@stb.dot.gov* or Chris Oehrle at (202) 245–0271. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.] Filings made in responses to this collection are available on the Board's Web site at *www.stb.dot.gov.*

SUPPLEMENTARY INFORMATION: Under §§ 10901–03 and 11323–26, an application is required to seek authority under these sections, unless an applicant receives an exemption under 49 U.S.C. 10502. Respondents seeking such authority from the Board must submit certain information required under the Board's related regulations. The table below shows the statutory and regulatory provisions under which the Board requires the information collections that are the subject of this notice.

TABLE—STATUTORY AND REGULATORY PROVISIONS *

Certificate required	Statutory provision	Regulations
Construct, Acquire, or Operate Railroad Lines	49 U.S.C. 10901	49 CFR Part 1150.
Short Line purchases by Class II and Class III Rail Carriers	49 U.S.C. 10902	49 CFR 1150.41–45.
Abandonments and Discontinuances	49 U.S.C. 10903	49 CFR Part 1152.
Railroad Acquisitions, Trackage Rights, and Leases	49 U.S.C. 11323–26	49 CFR Part 1180.

* STB regulations may be viewed on the STB Web site under E-Library > Reference: STB Rules (*http://www.stb.dot.gov/stb/elibrary/ref_stbrules.html*).

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: June 29, 2015.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–16447 Filed 7–2–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities: Statutory Authority To Preserve Rail Service

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of the information collections required under 49 U.S.C. 10904–05 and 10907, and 16 U.S.C. 1247(d).

Under these statutory provisions, the Board administers programs designed to preserve railroad service or rail rights-of-way. When a line is proposed for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: An offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (§ 10905); or a trail-use request (16 U.S.C. 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (§ 10907). When a line is so placed on the map, the feeder line applicant need not demonstrate that the public convenience and necessity require or permit the sale of the line, but need only pay the constitutional minimum value to acquire it. Additionally, the railroad owning the rail line subject to abandonment must, in some circumstances, provide

information to the applicant or offeror. The relevant information collections are described in more detail below.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Title: Statutory Authority to Preserve Rail Service.

OMB Control Number: 2140–0022.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment, and railroads that are required to provide information to the offeror or applicant.

Number of Respondents: 40 (including informational filings required of railroads).

Frequency: On occasion.

TABLE—NUMBER OF YEARLY RESPONSES

Type of filing	Number of filings
Offer of Financial Assistance	1
OFA—Railroad Reply to Request for Information	2
OFA—Request to Set Terms and Conditions	1
Request for Public Use Condition	1
Feeder Line Application	1
Trail-Use Request	27
Trail-Use Request Extension	94

Total Burden Hours (annually including all respondents): 612 hours (sum total of estimated hours per response X number of responses for each type of filing).

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response
Offer of Financial Assistance	32 hours
OFA—Railroad Reply to Request for Information	10 hours
OFA—Request to Set Terms and Conditions	4 hours
Request for Public Use Condition	2 hours
Feeder Line Application	70 hours
Trail-Use Request	4 hours
Trail-Use Request Extension	4 hours

Total ''Non-hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), and Section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, or to impose a trail use or public use condition. Under 49 U.S.C. 10904, the filing of an OFA starts a process of negotiations to define the financial assistance needed to purchase or subsidize the rail line sought for abandonment. Once the OFA is filed, the offeror may request additional information from the railroad, which the railroad must provide. If the parties cannot agree to the sale or subsidy, either party also may file a request for the Board to set the terms and conditions of the financial assistance. Under § 10905, a public use request allows the Board to impose a 180-day public use condition on the abandonment of a rail line, permitting the parties to negotiate a public use for the rail line. Under § 10907, a feeder line application provides the basis for authorizing an involuntary sale of a rail line. Finally, under 16 U.S.C. 1247(d), a trail-use request, if agreed upon by the abandoning carrier, requires the Board to condition the abandonment by issuing a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), permitting the parties to negotiate an interim trail use/rail banking agreement for the rail line.

The collection by the Board of these offers, requests, and applications, and the railroad's replies (when required), enables the Board to meet its statutory duty to regulate the referenced rail transactions. *See Table—Statutory and Regulatory Provisions* below.

Retention Period: Information in these collections is maintained by the Board for 10 years, after which it is transferred to the National Archives as permanent records.

DATES: Comments on this information collection should be submitted by September 4, 2015.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.dot.gov.* When submitting comments, please refer to ''Statutory Authority to Preserve Rail Service.'' For further information regarding this collection, contact *PRA@stb.dot.gov* or Chris Oehrle at (202) 245–0271. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.] Filings made in responses to this collection are available on the Board's Web site at *www.stb.dot.gov.*

SUPPLEMENTARY INFORMATION:

Respondents seeking authority from the Board to preserve rail lines must submit certain information required under the Board's related regulations and, in some circumstances, railroads seeking to abandon a line must disclose certain information to the offeror or applicant.

Offer of Financial Assistance. When a rail line would otherwise be approved for abandonment (or discontinuance), any financially responsible person may seek to acquire the line for continued rail service (after abandonment has been approved), or may seek to temporarily subsidize continued operations by the incumbent railroad (after abandonment or discontinuance has been approved), by filing an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27. An OFA may be submitted to the Board as soon as the railroad seeks abandonment (or discontinuance) authority. Once an OFA is submitted, the abandoning railroad must, upon request, promptly provide to any party considering an OFA and to the Board an estimate of the annual subsidy or minimum purchase price; a report on the physical condition of line; and data on traffic, revenues, net liquidation value, and the cost to rehabilitate to class I (minimum) track standards. If the parties are not able to agree upon the purchase price or subsidy, then, to move forward, either party may ask the Board to set the price or subsidy, which will be binding upon the parties if the offeror chooses to accept the terms set by the Board and proceed with the purchase.

Public Use Request. Any person may request that the Board prohibit an abandoning railroad from disposing of the right-of-way—for up to 180 days—without first offering the right-of-way (on reasonable terms) for other suitable public purposes (such as mass transit,

pipeline, transmission lines, recreation, etc.). Such requests are governed by 49 U.S.C. 10905 and 49 CFR 1152.28.

Feeder Line Application. When a line has been identified on a railroad's system diagram map as a potential candidate for abandonment (or discontinuance), but before abandonment (or discontinuance) authority has been sought, any financially responsible person (other than a Class I or II railroad) may, by filing a feeder line application under 49 U.S.C. 10907 and 49 CFR 1151, seek to acquire the line for continued rail service under the forced sale provisions of the feeder railroad development program.

Trail-Use Request. The Trails Act provides a mechanism whereby any interested person may seek to ''railbank'' a rail right-of-way that has been approved for abandonment and use the property in the interim as a recreational trail. The Board has a ministerial role in this process; under 49 CFR 1152.29, interested persons may submit a request to the Board for a trail-use condition, and if the statutory conditions are met, the Board must authorize the parties to negotiate a trail-use agreement by issuing a CITU, or, in an exemption proceeding, a NITU. The CITU or NITU typically permit negotiations for 180 days, but the negotiations can be extended upon request to the Board. Under the Trails Act, trail-use agreements are consensual, not forced. The abandoning railroad is free to choose whether or not to enter into or continue negotiations to transfer (all or part of) the right-of-way to a trail sponsor.

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: June 29, 2015.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–16420 Filed 7–2–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 327X)]

Norfolk Southern Railway Company—Abandonment, Discontinuance of Trackage Rights and Discontinuance of Service—in Cleveland and Rutherford Counties, NC, and Cherokee County, SC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuance of Service* for NSR to abandon and discontinue trackage rights and service as follows: (1) NSR will abandon approximately 11.85 miles of rail line, consisting of two line segments, one of which is located between milepost SB 144.55 and milepost SB 154.50 and the other between milepost SB 158.10 and milepost SB 160.00; (2) NSR will discontinue trackage rights granted to it by CSX Transportation, Inc. (CSXT) over approximately 22.8 miles of CSXT track, located between milepost SF 384.6 and milepost SF 407.4;[1] and (3) NSR will discontinue service over approximately 3.20 miles of rail line, extending between milepost SB 144.55 and milepost SB 141.35 (collectively, the Line).[2] The Line traverses United States Postal Service Zip Codes 28073, 28152, 28150, 28089, 28114, 28040, 28018, 28043, and 29702.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint has been filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line, and no such complaint is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 16, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 27, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.[5]

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 10, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be

[1] The CSXT track over which NSR has trackage rights connects the two line segments that NSR seeks to abandon.

[2] NSR states that, although there are different line segments involved, it operates over them as if they were a single line.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[5] NSR states that it may not have title to the entire right-of-way underlying the rail line segments proposed for abandonment, which could limit the availability of the corridor for other public purposes.

filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by July 6, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: June 26, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–16451 Filed 7–2–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 4, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information. Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90 (TD 8571).

Abstract: These regulations require the reporting of certain information relating to payments of mortgage interest. Taxpayers must separately state on Form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 37,644.

Estimated Time per Respondent: 7 hrs., 31 minutes.

Estimated Total Annual Burden Hours: 283,056.

Title: Guidance on Passive Foreign (PFIC) Purging Elections.

OMB Number: 1545–1965.

Regulation Project Number: REG–133446–03 (TD 9360).

Abstract: The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: June 24, 2015.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2015–16483 Filed 7–2–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS); Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Advisory Committee on Tax Exempt and Government Entities (ACT) has been renewed for a two-year period beginning May 11, 2015.

FOR FURTHER INFORMATION CONTACT: Mark O'Donnell by email at *tege.advisory.comm@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of Treasury to announce the renewal of the *Advisory Committee on Tax Exempt and Government Entities (ACT).* The primary purpose of the ACT is to provide an organized public forum for senior Internal Revenue Service executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the ACT reviews existing tax policy and/or makes recommendations with respect to emerging tax administration issues. The ACT suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggests improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception on IRS activities to Internal Revenue Service executives, the ACT comprises of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from employee plans, exempt organizations, tax-exempt bonds, and federal, state, local, and Indian tribal governments.

Dated: June 23, 2015.

Melaney Partner,

Acting, Designated Federal Officer, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2015–16482 Filed 7–2–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its sixth meeting on Thursday, July 23, 2015, in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue, Washington, DC 20220, beginning at 9:45 a.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov* and limited seating will also be available.

DATES: The meeting will be held on Thursday, July 23, 2015, beginning at 9:45 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Cash Room, Main Treasury Building, 1500 Pennsylvania Avenue, Washington, DC 20220. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov.* A limited number of seats will be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the OFR by email at *David.Johnson@treasury.gov* by 5 p.m. Eastern Time on July 16, 2015, to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: David Johnson, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–3002 (this is not a toll-free number), *David.Johnson@treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- Electronic Statements. Email the Committee's Designated Federal Officer at *David.Johnson@treasury.gov.*
- Paper Statements. Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: David Johnson, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The OFR will post statements on the Committee's Web site, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the sixth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members will include welcoming new Committee members, OFR progress on prior Committee recommendations, current activities of the OFR, Subcommittee reports to the Committee, and Committee recommendations. For more information on the OFR and the Committee, please visit the OFR Web site at *http://www.financialresearch.gov.*

Dated: June 25, 2015.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2015–16457 Filed 7–2–15; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 80 Monday,
No. 128 July 6, 2015

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 541

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 541

RIN 1235–AA11

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: The Fair Labor Standards Act (FLSA or Act) guarantees a minimum wage and overtime pay at a rate of not less than one and one-half times the employee's regular rate for hours worked over 40 in a workweek. While these protections extend to most workers, the FLSA does provide a number of exemptions. The Department of Labor (Department) proposes to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's ''EAP'' or ''white collar'' exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption is currently $455 a week ($23,660 for a full-year worker) and was last updated in 2004.

By way of this rulemaking, the Department seeks to update the salary level to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees, thus making the EAP exemption easier for employers and workers to understand. The Department also proposes automatically updating the salary level to prevent the level from becoming outdated with the often lengthy passage of time between rulemakings. Lastly, the Department is considering whether revisions to the duties tests are necessary in order to ensure that these tests fully reflect the purpose of the exemption.

DATES: Submit written comments on or before September 4, 2015.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA11, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions for submitting comments. *Mail:* Address written submissions to Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov*, including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period as the Department continues to experience delays in the receipt of mail in our area. For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' section of this document. For questions concerning the interpretation and enforcement of labor standards related to the FLSA, individuals may contact the Wage and Hour Division (WHD) local district offices (see contact information below). *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's Web site at *http://www.dol.gov/whd/america2.htm* for a nationwide listing of WHD district and area offices.

Electronic Access and Filing Comments

Public Participation: This proposed rule is available through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via WHD's Web site at *http://www.dol.gov/whd/*. To comment electronically on Federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on Federal documents that are open for comment and published in the **Federal Register**. You must identify all comments submitted by including ''RIN 1235–AA11'' in your submission. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period (11:59 p.m. on the date identified above in the **DATES** section); comments received after the comment period closes will not be considered. Submit only one copy of your comments by only one method. Please be advised that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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I. Executive Summary

The FLSA was passed to both guarantee a minimum wage and to limit the number of hours an employee could work without additional compensation. Section 13(a)(1), which excludes certain white collar employees from minimum wage and overtime pay protections, was included in the original Act in 1938. The exemption was premised on the belief that the exempted workers earned salaries well above the minimum wage and enjoyed other privileges, including above-average fringe benefits, greater job security, and better opportunities for advancement, setting them apart from workers entitled to overtime pay. The statute delegates to the Secretary of Labor the authority to define and delimit the terms of the exemption.

On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards. 79 FR 18737 (Apr. 3, 2014). Consistent with the President's goal of ensuring workers are paid a fair day's pay for a fair day's work, the memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented.

Since 1940, the regulations implementing the white collar exemption have generally required each of three tests to be met for the exemption to apply: (1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet a minimum specified amount (the ''salary level test''); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the ''duties test'').

One of the Department's primary goals in this rulemaking is updating the section 13(a)(1) exemption's salary requirements. The Department has updated the salary level requirements seven times since 1938, most recently in 2004. Under the current regulations, an executive, administrative, or professional employee must be paid at least $455 per week ($23,660 per year for a full-year worker) in order to come within the standard exemption; in order to come within the exemption for highly compensated employees (HCE), such an employee must earn at least $100,000 in total annual compensation.

The Department has long recognized the salary level test as ''the best single test'' of exempt status. If left at the same amount over time, however, the effectiveness of the salary level test as a means of determining exempt status diminishes as the wages of employees entitled to overtime increase and the real value of the salary threshold falls. In order to maintain the effectiveness of the salary level test, the Department proposes to set the standard salary level equal to the 40th percentile of earnings for full-time salaried workers ($921 per week, or $47,892 annually for a full-year worker, in 2013).[1] The Department is also proposing to set the highly compensated employee annual compensation level equal to the 90th percentile of earnings for full-time salaried workers ($122,148 annually). Furthermore, in order to prevent the levels from becoming outdated, the Department is proposing to include in the regulations a mechanism to automatically update the salary and compensation thresholds on an annual basis using either a fixed percentile of wages or the CPI–U.

The Department is proposing to update the salary and compensation levels to ensure that the FLSA's intended overtime protections are fully implemented and to simplify the identification of overtime-protected and exempt employees, thus making the exemptions easier for employers and workers to understand. The proposed increase to the standard salary level is also intended to address the Department's conclusion that the salary level set in 2004 was too low to efficiently screen out from the exemption overtime-protected white collar employees when paired with the standard duties test. The Department believes that a standard salary level at the 40th percentile of all full-time salaried employees ($921 per week, or $47,892 for a full-year worker, in 2013) will accomplish the goal of setting a salary threshold that adequately distinguishes between employees who may meet the duties requirements of the EAP exemption and those who likely do not, without necessitating a return to the more detailed long duties test.[2] The Department believes that the proposed salary compensates for the absence of a long test, which would have allowed employers to claim the exemption at a lower salary level, but only if they could satisfy a more restrictive duties test; moreover, it does so without setting the salary at a level that excludes from exemption an unacceptably high number of employees who meet the duties test. The Department also believes that, by reducing the number of workers for whom employers must apply the duties test to determine exempt status, this proposal is responsive to the President's directive to simplify the exemption. Similarly, the Department believes that the proposal to set the HCE total annual compensation level at the annualized value of the 90th percentile of weekly wages of all full-time salaried employees ($122,148 per year) will ensure that the HCE

[1] The BLS data set used to set the salary level for this rulemaking consists of earnings for full-time (defined as at least 35 hours per week) non-hourly paid employees. For the purpose of this rulemaking, the Department considers data representing compensation paid to non-hourly workers to be an appropriate proxy for compensation paid to salaried workers. The Department relied upon 2013 data in the development of the NPRM. The Department will update the data used in the Final Rule resulting from this proposal, which will change the dollar figures. If, after consideration of comments received, the Final Rule were to adopt the proposed salary level of the 40th percentile of weekly earnings, the Department would likely rely on data from the first quarter of 2016. The latest data currently available are for the first quarter of 2015, in which the 40th percentile of weekly earnings is $951, which translates into $49,452 for a full-year worker. Assuming two percent growth between the first quarter of 2015 and the first quarter of 2016, the Department projects that the 40th percentile weekly wage in the final rule would likely be $970, or $50,440 for a full-year worker.

[2] From 1949 until 2004 the regulations contained two different tests for exemption—a long duties test for employees paid a lower salary, and a short duties test for employees paid at a higher salary level.

exemption continues to cover only employees who almost invariably meet all the other requirements for exemption. Finally, the Department proposes to automatically update the standard salary and compensation levels annually to ensure that they maintain their effectiveness going forward, either by maintaining the levels at a fixed percentile of earnings or by updating the amounts based on changes in the CPI–U. The Department believes that regularly updating the salary and compensation levels is the best method to ensure that these tests continue to provide an effective means of distinguishing between overtime-eligible white collar employees and those who may be bona fide EAP employees. The Department is not making specific proposals to modify the standard duties tests but is seeking comments on whether the tests are working as intended to screen out employees who are not bona fide EAP employees; in particular, the Department is concerned that in some instances the current tests may allow exemption of employees who are performing such a disproportionate amount of nonexempt work that they are not EAP employees in any meaningful sense.

In 2013, there were an estimated 144.2 million wage and salary workers in the United States, of whom the Department estimates that 43.0 million are white collar salaried employees who may be impacted by a change to the Department's part 541 regulations. Of these workers, the Department estimates that 21.4 million are currently exempt EAP workers who are subject to the salary level requirement and may be potentially affected by the proposed rule.[3]

In Year 1 the Department estimates 4.6 million currently exempt workers who earn at least the current weekly salary level of $455 but less than the 40th earnings percentile ($921) would, without some intervening action by their employers, become entitled to minimum wage and overtime protection under the FLSA (Table ES1). Similarly, an estimated 36,000 currently exempt workers who earn at least $100,000 but less than the 90th earnings percentile ($122,148) per year and who meet the HCE duties test but not the standard duties test may also become eligible for minimum wage and overtime protection. In Year 10, with automatic updating of the salary levels, the Department projects that between 5.1 and 5.6 million workers will be affected by the change in the standard salary level test and between 33,000 and 42,000 workers will be affected by the change in the HCE total annual compensation test, depending on the updating methodology used (CPI–U or fixed percentile of wage earnings, respectively). Additionally, the Department estimates that an additional 6.3 million white collar workers who are currently overtime eligible because they do not satisfy the EAP duties tests and who currently earn at least $455 per week but less than the proposed salary level would have their overtime protection strengthened in Year 1 because their exemption status would be clear based on the salary test alone without the need to examine their duties.

Three direct costs to employers are quantified in this analysis: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Assuming a 7 percent discount rate, the Department estimates that average annualized direct employer costs will total between $239.6 and $255.3 million per year, depending on the updating methodology used as shown in (Table ES1). In addition to the direct costs, this proposed rulemaking will also transfer income from employers to employees in the form of higher earnings. Average annualized transfers are estimated to be between $1,178.0 and $1,271.4 million, depending on which of the two updating methodologies analyzed in this proposal is used. The Department also projects average annualized deadweight loss of between $9.5 and $10.5 million, and notes that the projected deadweight loss is small in comparison to the amount of estimated costs.

Impacts of the proposed rule extend beyond those quantitatively estimated. For example, a potential impact of the rule's proposed increase in the salary threshold is a reduction in litigation costs. Other unquantified transfers, costs, and benefits are discussed in section VII.D.vii.

TABLE ES1—SUMMARY OF REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS WITH AUTOMATIC UPDATING

[Millions 2013$]

Cost/Transfer[a]	Automatic updating method[b]	Year 1	Future years[c]		Average annualized value	
			Year 2	Year 10	3% Real rate	7% Real rate
Affected Workers (1,000s)						
Standard	Percentile	4,646	4,747	5,568	—	—
	CPI–U	4,646	4,634	5,062	—	—
HCE	Percentile	36	36	42	—	—
	CPI–U	36	35	33	—	—
Costs and Transfers (Millions 2013$)						
Direct employer costs	Percentile	592.7	188.8	225.3	248.8	255.3
	CPI–U	592.7	181.1	198.6	232.3	239.6
Transfers[d]	Percentile	1,482.5	1,160.2	1,339.6	1,271.9	1,271.4
	CPI–U	1,482.5	1,126.4	1,191.4	1,173.7	1,178.0
DWL	Percentile	7.4	10.8	11.2	10.5	10.5
	CPI–U	7.4	10.3	9.7	9.6	9.5

[a] Costs and transfers for affected workers passing the standard and HCE tests are combined.

[b] The percentile method sets the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers and the HCE compensation level at the 90th percentile. The CPI–U method adjusts both levels based on the annual percent change in the CPI–U.

[c] These costs/transfers represent a range over the nine-year span.

[3] White collar salaried workers not subject to the EAP salary level test include teachers, academic administrative personnel, physicians, lawyers, judges, and outside sales workers.

[d] This is the net transfer from employers to workers. There may also be transfers of hours and income from some workers to other workers. Unquantified transfers, costs and benefits are addressed in Section VII.

The Department believes that the proposed increase in the standard salary level to the 40th percentile of weekly earnings for full-time salaried workers and increasing the HCE compensation level to the 90th percentile of full-time salaried workers' earnings, combined with annual updating, is the simplest method for securing the effectiveness of the salary level as a bright-line for ensuring that employees entitled to the Act's overtime provisions are not exempted. The Department recognizes that the proposed standard salary threshold is lower than the historical average salary for the short duties test (the basis for the standard duties test) but believes that it will appropriately distinguish between overtime-eligible white collar salaried employees and those who may meet the EAP duties test without necessitating a return to the more rigorous long duties test. A standard salary threshold significantly below the 40th percentile, or the absence of a mechanism for automatically updating the salary level, however, would require a more rigorous duties test than the current standard duties test in order to effectively distinguish between white collar employees who are overtime protected and those who may be bona fide EAP employees. The Department believes that this proposal is the least burdensome but still cost-effective mechanism for updating the salary and compensation levels, and indexing future levels, and is consistent with the Department's statutory obligations.

II. Background

A. What the FLSA Provides

The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (currently $7.25 an hour) for all hours worked, and overtime premium pay of one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek.[4] However, there are a number of exemptions from the FLSA's minimum wage and overtime requirements. Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts from both minimum wage and overtime protection ''any employee employed in a bona fide executive, administrative, or professional capacity . . . or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of [the Administrative Procedure Act] . . .).'' The FLSA does not define the terms ''executive,'' ''administrative,'' ''professional,'' or ''outside salesman.'' Pursuant to Congress' grant of rulemaking authority, the Department in 1938 issued the first regulations at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Because Congress explicitly delegated to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice and comment rulemaking, the regulations so issued have the binding effect of law. *See Batterton* v. *Francis,* 432 U.S. 416, 425 n.9 (1977).

The Department has consistently used its rulemaking authority to define and clarify the section 13(a)(1) exemptions. Since 1940, the implementing regulations have generally required each of three tests to be met for the exemptions to apply: (1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet a minimum specified amount (the ''salary level test''); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the ''duties test'').

B. Legislative History

Although section 13(a)(1) exempts covered employees from both the FLSA's minimum wage and overtime requirements, its most significant impact is its removal of these employees from the Act's overtime protections. It is widely recognized that the general requirement that employers pay a premium rate of pay for all hours worked over 40 in a workweek is a cornerstone of the Act, grounded in two policy objectives. The first is to spread employment by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours, thereby reducing involuntary unemployment. *See, e.g., Davis* v. *J.P. Morgan Chase,* 587 F.3d 529, 535 (2d Cir. 2009) (''The overtime requirements of the FLSA were meant to apply financial pressure to spread employment to avoid the extra wage and to assure workers additional pay to compensate them for the burden of a workweek beyond the hours fixed in the act.'') (internal quotation marks omitted). The second policy objective is to reduce overwork and its detrimental effect on the health and well-being of workers. *See, e.g., Barrentine* v. *Arkansas-Best Freight System, Inc.,* 450 U.S. 728, 739 (1981) (''The FLSA was designed to give specific minimum protections to individual workers and to ensure that each employee covered by the Act would receive a fair day's pay for a fair day's work and would be protected from the evil of overwork as well as underpay.'') (internal quotation marks and brackets omitted).

Section 13(a)(1) was included in the original Act in 1938 and was based on provisions contained in the earlier National Industrial Recovery Act of 1933 (NIRA) and state law precedents. Specific references in the legislative history to the exemptions contained in section 13(a)(1) are scant. However, the exemptions were premised on the belief that the exempted workers typically earned salaries well above the minimum wage and were presumed to enjoy other privileges to compensate them for their long hours of work, such as above-average fringe benefits, greater job security, and better opportunities for advancement, setting them apart from the nonexempt workers entitled to overtime pay. *See* Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).[5] Further, the type of work exempt employees performed was difficult to standardize to any time frame and could not be easily spread to other workers after 40 hours in a week, making enforcement of the overtime provisions difficult and generally precluding the potential job expansion intended by the FLSA's time-and-a-half overtime premium. *Id.*

The universe of employees eligible for the exemptions has fluctuated with amendments to the FLSA. Initially, persons employed in a ''local retailing capacity'' were exempt, but Congress eliminated that language from section 13(a)(1) in 1961 when the FLSA was expanded to cover retail and service enterprises. *See* Public Law 87–30, 75 Stat. 65 (May 5, 1961). Teachers and

[4] As discussed *infra,* the Department estimates that 128.5 million workers are subject to the FLSA and the Department's regulations. Most of these workers are covered by the Act's minimum wage and overtime pay protections.

[5] Congress created the Minimum Wage Study Commission as part of the Fair Labor Standards Amendments of 1977. *See* Sec. 2(e)(1), Public Law 95–151, 91 Stat. 1246 (Nov. 1, 1977). This independent commission was tasked with examining many FLSA issues, including the Act's minimum wage and overtime exemptions, and issuing a report to the President and to Congress with the results of its study.

academic administrative personnel were added to the exemption when elementary and secondary schools were made subject to the FLSA in 1966. Sec. 214, Public Law 89–601, 80 Stat. 830 (Sept. 23, 1966). The Education Amendments of 1972 made the Equal Pay provisions, section 6(d) of the FLSA, expressly applicable to employees who were otherwise exempt from the FLSA under section 13(a)(1). Sec. 906(b)(1), Public Law 92–318, 86 Stat. 235 (June 23, 1972).

A 1990 enactment expanded the exemptions to include in the regulations defining exempt executive, administrative, and professional employees, computer systems analysts, computer programmers, software engineers, and similarly skilled professional workers, including those paid on an hourly basis if paid at least 6½ times the minimum wage. Sec. 2, Public Law 101–583, 104 Stat. 2871 (Nov. 15, 1990). The compensation test for computer-related occupations was subsequently capped at $27.63 an hour (6½ times the minimum wage in effect at the time) as part of the 1996 FLSA Amendments, when Congress enacted the new section 13(a)(17) exemption for such computer employees. Section 13(a)(17) also incorporated much of the regulatory language that resulted from the 1990 enactment. *See* 29 U.S.C. 213(a)(17), as added by the 1996 FLSA Amendments (Sec. 2105(a), Public Law 104–188, 110 Stat. 1755 (Aug. 20, 1996)).

C. Regulatory History

The FLSA became law on June 25, 1938, and the first version of part 541, setting forth the criteria for exempt status under section 13(a)(1), was issued that October. 3 FR 2518 (Oct. 20, 1938). Following a series of public hearings, which were discussed in a report issued by WHD,[6] the Department published revised regulations in 1940, which, among other things, updated and expanded the salary level test. 5 FR 4077 (Oct. 15, 1940). Further hearings were convened in 1947, as discussed in a WHD-issued report,[7] and revised regulations, which updated the salary levels required to meet the salary level test for the various exemptions, were issued in 1949. 14 FR 7705 (Dec. 24, 1949). An explanatory bulletin interpreting some of the terms used in the regulations was published as subpart B of part 541 in 1949. 14 FR 7730 (Dec. 28, 1949). In 1954, the Department issued revisions to the regulatory interpretations of the salary basis test. 19 FR 4405 (July 17, 1954). In 1958, based on another WHD-issued report,[8] the regulations were revised to update the required salary levels. 23 FR 8962 (Nov. 18, 1958). Additional changes, including periodic salary level updates, were made to the regulations in 1961 (26 FR 8635, Sept. 15, 1961), 1963 (28 FR 9505, Aug. 30, 1963), 1967 (32 FR 7823, May 30, 1967), 1970 (35 FR 883, Jan. 22, 1970), 1973 (38 FR 11390, May 7, 1973), and 1975 (40 FR 7091, Feb. 19, 1975). Revisions to increase the salary levels in 1981 were stayed indefinitely by the Department. 46 FR 11972 (Feb. 12, 1981). In 1985, the Department published an Advance Notice of Proposed Rulemaking that reopened the comment period on the 1981 proposal and broadened the review to all aspects of the regulations, including whether to increase the salary levels, but this rulemaking was never finalized. 50 FR 47696 (Nov. 19, 1985).

The Department revised the part 541 regulations twice in 1992. First, the Department created a limited exception from the salary basis test for public employees, permitting public employers to follow public sector pay and leave systems requiring partial-day deductions from pay for absences for personal reasons or due to illness or injury not covered by accrued paid leave, or due to budget-driven furloughs, without defeating the salary basis test required for exemption. 57 FR 37677 (Aug. 19, 1992). The Department also implemented the 1990 law requiring it to promulgate regulations permitting employees in certain computer-related occupations to qualify as exempt under section 13(a)(1) of the FLSA. 57 FR 46744 (Oct. 9, 1992); *see* Sec. 2, Public Law 101–583, 104 Stat. 2871 (Nov. 15, 1990).

On March 31, 2003, the Department published a Notice of Proposed Rulemaking proposing significant changes to the part 541 regulations. 68 FR 15560 (Mar. 31, 2003). On April 23, 2004, the Department issued a Final Rule (2004 Final Rule), which raised the salary level for the first time since 1975, and made other changes, some of which are discussed below. 69 FR 22122 (Apr. 23, 2004). Current regulations retain the three tests for exempt status that have been in effect since 1940: A salary basis test, a salary level test, and a job duties test.

D. Overview of Existing Regulatory Requirements

The regulations in part 541 contain specific criteria that define each category of exemption provided by section 13(a)(1) for bona fide executive, administrative, professional, outside sales employees, and teachers and academic administrative personnel. The regulations also define those computer employees who are exempt under section 13(a)(1) and section 13(a)(17). *See* §§ 541.400–.402. The employer bears the burden of establishing the applicability of any exemption from the FLSA's pay requirements. Job titles and job descriptions do not determine exempt status, nor does paying a salary rather than an hourly rate. To qualify for the EAP exemption, employees must meet certain tests regarding their job duties and generally must be paid on a salary basis of not less than $455 per week.[9] In order for the exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations. The duties tests differ for each category of exemption.

The Department last updated the salary levels in the 2004 Final Rule, setting the standard test threshold at $455 per week for executive, administrative, and professional employees. Since its prior revision in 1975, the salary level tests had grown outdated and were thus no longer effective at distinguishing between exempt and nonexempt employees. Mindful that nearly 30 years had elapsed between salary level increases, and in response to commenter concerns that similar lapses would occur in the future, in the 2004 Final Rule the Department expressed the intent to

[6] Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer (Harold Stein) at Hearings Preliminary to Redefinition (Oct. 10, 1940) (''Stein Report'').

[7] Report and Recommendations on Proposed Revisions of Regulations, Part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (June 30, 1949) (''Weiss Report'').

[8] Report and Recommendations on Proposed Revision of Regulations, Part 541, Under the Fair Labor Standards Act, by Harry S. Kantor, Presiding Officer, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (Mar. 3, 1958) (''Kantor Report'').

[9] Alternatively, administrative and professional employees may be paid on a ''fee basis.'' This occurs where an employee is paid an agreed sum for a single job regardless of the time required for its completion. § 541.605(a). Salary level test compliance for fee basis employees is assessed by determining whether the hourly rate for work performed (*i.e.,* the fee payment divided by the number of hours worked) would total at least $455 per week if the employee worked 40 hours. *See* § 541.605(b). Some employees, such as doctors and lawyers (§ 541.600(e)), teachers (§ 541.303(d); § 541.600(e)), and outside sales employees (§ 541.500(c)), are not subject to a salary or fee basis test. Some, such as academic administrative personnel, are subject to a special, contingent salary level. *See* § 541.600(c). There is also a separate salary level in effect for workers in American Samoa (§ 541.600(a)), and a special salary test for motion picture industry employees (§ 541.709).

''update the salary levels on a more regular basis.'' 69 FR 22171.

Under the current part 541 regulations, an exempt executive employee must be compensated on a salary basis at a rate of not less than $455 per week and have a primary duty of managing the enterprise or a department or subdivision of the enterprise. § 541.100(a)(1)–(2). An exempt executive must also customarily and regularly direct the work of at least two employees and have the authority to hire or fire, or the employee's suggestions and recommendations as to the hiring, firing, or other change of status of employees must be given particular weight. § 541.100(a)(3)–(4).

An exempt administrative employee must be compensated on a salary or fee basis at a rate of not less than $455 per week and have a primary duty of the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. § 541.200. An exempt administrative employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. *Id.*

An exempt professional employee must be compensated on a salary or fee basis at a rate of not less than $455 per week and have a primary duty of (1) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or (2) work that is original and creative in a recognized field of artistic endeavor, or (3) teaching in a school system or educational institution, or (4) work as a computer systems analyst, computer programmer, software engineer, or other similarly-skilled worker in the computer field. §§ 541.300; 541.303; 541.400. An exempt professional employee must perform work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor. § 541.300(a)(2). The salary requirements do not apply to certain licensed or certified doctors, lawyers, and teachers. §§ 541.303(d); 541.304(d).

An exempt outside salesperson must be customarily and regularly engaged away from the employer's place of business and have a primary duty of making sales, or obtaining orders or contracts for services or for the use of facilities. § 541.500. There are no salary or fee requirements for exempt outside sales employees. *Id.*

The 2004 Final Rule created a new ''highly compensated'' test for exemption. Under the HCE exemption, employees who are paid total annual compensation of at least $100,000 (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA's overtime requirements if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption. § 541.601. The HCE exemption applies only to employees whose primary duty includes performing office or non-manual work; non-management production line workers and employees who perform work involving repetitive operations with their hands, physical skill, and energy are not exempt under this section no matter how highly paid. *Id.*

Employees who meet the requirements of part 541 are excluded from both the Act's minimum wage and overtime pay protections. As a result, employees may work any number of hours in the workweek and not be subject to the FLSA's minimum wage and overtime pay requirements. Some state laws have stricter exemption standards than those described above. The FLSA does not preempt any such stricter state standards. If a State establishes a higher standard than the provisions of the FLSA, the higher standard applies in that State. *See* 29 U.S.C. 218.

III. Presidential Memorandum

On March 13, 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which ''white collar'' workers are protected by the FLSA's minimum wage and overtime standards. 79 FR 18737 (Apr. 3, 2014). The memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented. As the President noted at the time, the FLSA's overtime protections are a linchpin of the middle class and the failure to keep the salary level requirement for the white collar exemption up-to-date has left millions of low-paid salaried workers without this basic protection.[10] The current salary level threshold for exemption of $455 per week, or $23,660 annually, is below the poverty threshold for a family of four.[11]

Following issuance of the memorandum, the Department embarked on an extensive outreach program, conducting listening sessions in Washington, DC, and several other locations, as well as by conference call. The listening sessions were attended by a wide range of stakeholders: Employees, employers, business associations, non-profit organizations, employee advocates, unions, state and local government representatives, tribal representatives, and small businesses. In these sessions the Department asked stakeholders to address, among other issues: (1) What is the appropriate salary level for exemption; (2) what, if any, changes should be made to the duties tests; and (3) how can the regulations be simplified.

Stakeholders representing employers expressed a wide variety of views on the appropriate salary level, ranging from a few who said the salary should not be raised, to several who noted their entry level managers already earned salaries far above the current annual salary level of $23,660. A number of representatives of national employers also noted regional variations in the salary levels they pay to EAP employees. Several employers encouraged the Department to consider nondiscretionary bonuses in determining whether the salary level is met, noting that such bonuses are a key part of exempt employees' compensation in their industries and contribute to an ''ownership mindset.'' Many employer stakeholders stated that they consider first-line managerial positions to be the gateway to developing their future senior managers and organizational leadership. A number of these employer stakeholders also raised concerns about changing currently exempt employees to nonexempt employees as a result of an increase in the salary requirement, stating that employees are attached to the perceived higher status of being in exempt salaried positions, and value the time flexibility and steady income that comes with such positions. These stakeholders also stressed the need for flexibility under the regulations, in particular emphasizing the value they place on a work culture that encourages managers to lead by example and ''pitch in'' to assist nonexempt employees. They stressed that changing the duties tests to limit exempt employees' ability to perform nonexempt work—such as California's 50 percent primary duty rule—would negatively impact the culture of the workplace, be difficult and costly to implement, and lead to increased litigation. They also noted the significant investment they made in

[10] *http://www.whitehouse.gov/the-press-office/2014/03/13/fact-sheet-opportunity-all-rewarding-hard-work-strengthening-overtime-pr.*

[11] *See http://www.census.gov/hhes/www/poverty/data/threshld/index.html.* The current salary level is less than the 10th percentile of full-time salaried workers.

reviewing employee classifications as a result of the 2004 Final Rule to determine whether employees met the revised duties tests. Finally, several employer representatives suggested that adding to the regulations additional examples of how the exemptions may apply to specific occupations would simplify employers' determinations of EAP exemption status.

Stakeholders representing employees universally endorsed the need to increase the salary level, noting that it has not been updated since 2004. Several employee advocates also stressed the need to index the salary level to ensure that it maintains its effectiveness as a demarcation line between exempt and overtime-eligible employees without having to rely on time consuming future rulemaking. Both individual employees and their representatives shared their concerns that some employers are taking advantage of exempt employees, requiring them to perform large amounts of routine work in order to keep down labor costs, and a few suggested that there needs to be a maximum hours cap for EAP exempt employees. They stressed that employees in ''management'' positions who are required to spend disproportionate amounts of time performing routine nonexempt tasks (ringing up customers, stocking shelves, bussing tables, cleaning stores and restaurants, etc., alongside or in place of front line workers) are not bona fide executives and do not, in fact, enjoy the flexibility and status traditionally associated with such positions and therefore are entitled to the overtime protections the FLSA was designed to provide. Employee advocates pointed to the California overtime rule as more protective of such workers.

While the HCE exemption was not a primary focus of any of the listening sessions, a number of business stakeholders stated that the $100,000 total annual compensation requirement was too high, and a few suggested that the duties test for the HCE exemption should be dropped and the exemption should be based on compensation level alone. In contrast, the employee stakeholders who addressed the issue argued that the HCE duties test was too lax and that the $100,000 total annual compensation requirement was too low, particularly in light of the wage gains at the top end of the earnings spectrum since 2004. Some employee advocates suggested eliminating the HCE exemption. While the outside sales exemption was also not a central focus of the sessions, several stakeholders representing employer interests argued that the distinction between inside and outside sales positions in the application of the EAP exemption does not reflect the realities of the modern workplace.[12]

The Department's outreach has made clear that there are also some widespread misconceptions about overtime eligibility under the FLSA. For example, many employers and employees mistakenly believe that payment of a salary automatically disqualifies an employee from entitlement to overtime compensation irrespective of the duties performed. Many employees are also unaware of the duties required to be performed in order for the exemption to apply. Additionally, many employers seem to mistakenly believe that nonexempt white collar employees *must* be converted to hourly compensation. Similarly, other employers erroneously believe that they are prohibited from paying nondiscretionary bonuses to EAP employees, given that they cannot be used to satisfy the salary requirement. Some employers also mistakenly believe that the EAP regulations limit their ability to permit white collar employees to work part-time or job share.[13] The Department believes that many of these misconceptions can be addressed through its education and outreach efforts.[14]

Lastly, the Department notes that multiple stakeholders on both sides of the issue expressed frustration with the exempt/nonexempt terminology and asked the Department to consider more descriptive terms. The Department recognizes that the terms ''exempt'' and ''nonexempt'' are not intuitive and can be confusing to both employers and employees. In an attempt to address this concern, the Department uses the terms ''overtime protected'' and ''overtime eligible'' at times in this NPRM as synonyms for nonexempt, and ''not overtime protected'' and ''overtime ineligible'' as synonyms for exempt. While the Department will continue to use the terms exempt and nonexempt as technical terms to ensure accuracy and continuity, we will, where appropriate, endeavor to use these more descriptive terms to aid the regulated community. The Department also uses the term ''EAP exemption'' throughout this NPRM to reflect the section 13(a)(1) exemption for executive, administrative, and professional employees.

The discussions in the listening sessions have informed not just the development of this NPRM, but also the Department's understanding of the role of overtime in the modern workplace. Some of the issues raised in the listening sessions are specifically referenced below in the Department's proposals; some issues that were raised are either beyond the scope of this rulemaking or beyond the Department's authority under the FLSA. For example, several employers expressed concern that employees who would become newly entitled to overtime under a higher salary level requirement would lose the flexibility they currently enjoy to work remotely on electronic devices because of employer concerns about overtime liability. Because this concern involves compensation for hours worked by overtime-protected employees, it is beyond the scope of this rulemaking. The Department, however, understands the importance of this concern and will publish a Request for Information in the near future seeking information from stakeholders on the use of electronic devices by overtime-protected employees outside of scheduled work hours.

The Department appreciates the views of all the participants in the listening sessions and welcomes further input from the public in response to this NPRM. Finally, consistent with the President's commitment to a 21st-century regulatory system, the Department would consider conducting a retrospective review of the Final Rule resulting from this proposal at an appropriate time in the future.

IV. Need for Rulemaking

One of the Department's primary goals in this rulemaking is updating the section 13(a)(1) exemption's salary level requirement. A salary level test has been part of the regulations since 1938 and

[12] Section 13(a)(1) expressly includes within the EAP exemption ''any employee employed . . . in the capacity of outside salesman.'' 29 U.S.C. 213(a)(1). As discussed in the 2004 Final Rule, ''the Administrator does not have statutory authority to exempt inside sales employees from the FLSA minimum wage and overtime requirements under the outside sales exemption.'' 69 FR 22162.

[13] As the Department has previously explained, there is no special salary level for EAP employees working less than full-time. 69 FR 22171. Employers, however, can pay white collar employees working part-time or job sharing a salary of less than the required EAP salary threshold and will not violate the Act so long as the salary equals at least the minimum wage for all hours worked and the employee does not work more than 40 hours a week. FLSA2008–1NA (Feb. 14, 2008).

[14] Such misconceptions are not new. In 1940 the Department responded to the related argument that employers would convert overtime-eligible white collar employees to hourly pay instead of more secure salaries, stating: ''Without underestimating the general desirability of weekly or monthly salaries which enable employees to adjust their expenditures on the basis of an assured income (so long as they remain employed), there is little advantage in salaried employment if it serves merely as a cloak for long hours of work. Further, such salaried employment may well conceal excessively low hourly rates of pay.'' Stein Report at 7.

has been long recognized as ''the best single test'' of exempt status. Stein Report at 19, 42; *see* Weiss Report at 8–9; Kantor Report at 2–3. The salary an employer pays an employee provides ''a valuable and easily applied index to the 'bona fide' character of the employment for which exemption is claimed'' and ensures that section 13(a)(1) of the FLSA ''will not invite evasion of section 6 and section 7 for large numbers of workers to whom the wage-and-hour provisions should apply.'' Stein Report at 19. The 1949 Weiss Report's statement remains true today: ''The experience of [the Department] since 1940 supports the soundness of the inclusion of the salary criteria in the regulations.'' Weiss Report at 8. In setting the salary level for the long test (which paired a lower salary with a limitation on the amount of non-exempt work an exempt worker could perform) the Department sought to provide a ready guide to assist employers in identifying employees who were unlikely to meet the duties tests for the exemptions.

The salary level's function in differentiating exempt from nonexempt employees takes on greater importance when there is only one duties test that has no limitation on the amount of nonexempt work that an exempt employee may perform, as has been the case since 2004. The Department set the standard salary level in 2004 equivalent to the former long test salary level, thus not adjusting the salary threshold to account for the absence of the more rigorous long duties test. The long test salary level was designed to operate as a ready guide to assist employers in identifying employees who were unlikely to meet the duties tests for the EAP exemption. The salary level required for exemption under section 13(a)(1) is currently $455 a week and has not been updated in more than 10 years. The annual value of the salary level ($23,660) is now lower than the poverty threshold for a family of four. If left at the same amount, the effectiveness of the salary level test as a means of helping determine exempt status diminishes as the wages of employees entitled to overtime pay increase and the real value of the salary threshold falls.

By way of this rulemaking, the Department seeks to update the salary level to ensure that the FLSA's intended overtime protections are fully implemented, and to simplify the identification of overtime-eligible employees, thus making the exemptions easier for employers and workers to understand. For similar reasons, the Department also proposes to update the total annual compensation required for the HCE exemption, since it too has been unchanged since 2004, and the current level could lead to inappropriate classification given the minimal duties test for that exemption.

In a further effort to respond to changing conditions in the workplace, the Department is also considering whether to allow nondiscretionary bonuses to satisfy some portion of the standard test salary requirement. Currently, such bonuses are only included in calculating total annual compensation under the HCE test, but some stakeholders have urged broader inclusion, pointing out that in some industries, particularly the retail and restaurant industries, significant portions of salaried EAP employees' earnings may be in the form of such bonuses.

The Department also proposes automatically updating the salary levels based on changes in the economy to prevent the levels from becoming outdated with the often lengthy passage of time between rulemakings. The Department proposes to automatically update the standard salary test, the annual compensation requirement for highly compensated employees, and the special salary levels for American Samoa and for motion picture industry employees, in order to ensure the continued utility of these tests over time. As explained in the Weiss Report, the salary test is only a strong measure of exempt status if it is up to date, and a weakness of the salary test is that increases in wage rates and salary levels over time gradually diminish its effectiveness. *See* Weiss Report at 8. In the 1970 rulemaking, in response to a comment requesting that the regulations provide for annual review and updating of the salary level, the Department noted that the idea ''appears to have some merit particularly since past practice has indicated that approximately 7 years elapse between amendment of these salary requirements,'' but concluded that such a proposal would require further study. 35 FR 884. In the 2004 Final Rule, the Department declined to adopt a process for automatically updating the salary level and instead stated our intent ''in the future to update the salary levels on a more regular basis'' as we did prior to 1975. Yet competing regulatory priorities, overall agency workload, and the time-intensive nature of the notice and comment process have hindered the Department's ability to achieve this goal, which would require nearly continuous future rulemaking. A rule providing for automatic updates to the salary level using a methodology that has been subject to notice and comment rulemaking would maintain the utility of the dividing line set by the salary level without the need for frequent rulemaking. This modernization of the regulations would provide predictability for employers and employees by replacing infrequent, and thus more drastic, salary level increases with gradual changes occurring at set intervals. Regular annual increases in the salary and compensation levels, instead of large changes that result from sporadic rulemaking, will provide more certainty and stability for employers.

The Department is also considering revisions to the duties tests in order to ensure that they fully reflect the purpose of the exemption. Possible revisions include requiring overtime-ineligible employees to spend a specified amount of time performing their primary duty (*e.g.,* a 50 percent primary duty requirement as required under California state law) or otherwise limiting the amount of nonexempt work an overtime-ineligible employee may perform, and adding to the regulations additional examples illustrating how the exemption may apply to particular occupations. As previously discussed, during listening sessions held in advance of this proposed rule, the Department asked stakeholders what, if any, changes should be made to the existing duties tests for exemption. Stakeholders from the business community, while noting the uncertainty caused by litigation surrounding their application of the current duties tests, generally advocated for no changes to the current duties tests and raised specific concerns about the difficulty of imposing any limit on the amount of nonexempt work that exempt employees may perform. These stakeholders indicated that the uncertainty which would result from any changes in the duties tests would be much more problematic than the challenges encountered with the current tests. Employees and stakeholders representing employee interests, however, generally advocated for stricter requirements to ensure that overtime-ineligible employees spend a sufficient amount of time performing exempt duties, and do not spend excessive amounts of time on nonexempt work. These stakeholders argued that such requirements would clarify the application of the exemption and restore overtime protection to employees whose duties are not, in fact, those of a bona fide executive, administrative, or professional employee. Several business stakeholders also suggested that adding additional examples of how the exemptions apply

to particular occupations would simplify application of the exemption for employers and increase the clarity of the current duties tests.

V. Proposed Regulatory Revisions

The Department's current proposal focuses primarily on updating the salary and compensation levels by proposing that the standard salary level be set at the 40th percentile of weekly earnings for full-time salaried workers, proposing to increase the HCE annual compensation requirement to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers, and proposing a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption. While the primary regulatory changes proposed are in §§ 541.600 and 541.601, additional conforming changes are proposed to update references to the salary level throughout part 541 as well as to update the special salary provisions for American Samoa and the motion picture industry. The proposal also discusses the inclusion of nondiscretionary bonuses to satisfy a portion of the standard salary requirement but does not propose specific regulatory changes. Additionally, the proposal discusses the duties tests, requests comments on the current requirements, and solicits suggestions for additional occupation examples, but does not make any specific proposals for revisions to these sections.

A. Setting the Standard Salary Level

i. History

The FLSA became law on June 25, 1938, and the first version of part 541, issued later that year, set a minimum salary level of $30 per week for executive and administrative employees. 3 FR 2518. Since 1938, the Department has increased the salary levels seven times—in 1940, 1949, 1958, 1963, 1970, 1975, and 2004. *See* Table A. While the Department's method for calculating the salary level has evolved to fulfill its mandate, the purpose of the salary level requirement has remained consistent—to define and delimit the scope of the executive, administrative, and professional exemptions. 29 U.S.C. 213(a)(1). The Department has long recognized that the salary paid to an employee is the ''best single test'' of exempt status (Stein Report at 19) and that setting a minimum salary threshold provides a ''ready method of screening out the obviously nonexempt employees'' while furnishing a ''completely objective and precise measure which is not subject to differences of opinion or variations in judgment.'' Weiss Report at 8–9. The Department reaffirmed this position in the 2004 Final Rule, explaining that the ''salary level test is intended to help distinguish bona fide executive, administrative, and professional employees from those who were not intended by Congress to come within these exempt categories[,]'' and reiterating that any increase in the salary level must ''have as its primary objective the drawing of a line separating exempt from nonexempt employees.'' 69 FR 22165.

TABLE A—WEEKLY SALARY LEVELS FOR EXEMPTION

Date enacted	Long test			Short test (all)
	Executive	Administrative	Professional	
1938	$30	$30	.....	.....
1940	30	50	$50	.....
1949	55	75	75	$100
1958	80	95	95	125
1963	100	100	115	150
1970	125	125	140	200
1975	155	155	170	250
Standard Test				
2004	$455			

In 1940, the Department maintained the $30 per week salary level set in 1938 for executive employees, increased the salary level for administrative employees, and established a salary level for professional employees. The Department used salary surveys from federal and state government agencies, experience gained under the National Industrial Recovery Act, and federal government salaries to determine the salary level that was the ''dividing line'' between employees performing exempt and nonexempt work. Stein Report at 9, 20–21, 31–32. The Department recognized that the salary level falls within a continuum of salaries that overlaps the outer boundaries of exempt and nonexempt employees. Specifically, the Department stated:

> To make enforcement possible and to provide for equity in competition, a rate should be selected in each of the three definitions which will be reasonable in the light of average conditions for industry as a whole. In some instances the rate selected will inevitably deny exemption to a few employees who might not unreasonably be exempted, but, conversely, in other instances it will undoubtedly permit the exemption of some persons who should properly be entitled to the benefits of the act.

Id. at 6. Taking into account the average salary levels for employees in numerous industries, and the percentage of employees earning below these amounts, the Department set the salary level for each exemption slightly below the ''dividing line'' suggested by these averages.

In 1949, the Department again looked at salary data from state and federal agencies, including the Bureau of Labor Statistics (BLS). The data reviewed included wages in small towns and low-wage industries, earnings of federal employees, average weekly earnings for exempt employees, starting salaries for college graduates, and salary ranges for different occupations such as bookkeepers, accountants, chemists, and mining engineers. Weiss Report at 10, 14–17, 19–20. The Department noted that the ''salary level adopted must exclude the great bulk of nonexempt persons if it is to be effective''. *Id.* at 18. Recognizing that the ''increase in wage rates and salary levels'' since 1940 had ''gradually weakened the effectiveness of the present salary tests as a dividing line between exempt and nonexempt employees,'' the Department calculated the percentage increase in weekly

earnings from 1940 to 1949, and then adopted new salary levels ''at a figure slightly lower than might be indicated by the data'' in order to protect small businesses. *Id.* at 8, 14. The Department also cautioned that ''a dividing line cannot be drawn with great precision but can at best be only approximate.'' *Id.* at 11

In 1949, the Department also established a second, less-stringent duties test for each exemption, but only for those employees who were paid at or above a higher ''short test'' salary level. Those paid above the higher salary level were exempt if they also met a ''short'' duties test, which lessened the duties requirements for exemption.[15] The rationale for this short test was that employees who met the higher salary level were more likely to meet all the requirements for exemption, and thus a ''short-cut test for exemption . . . would facilitate the administration of the regulations without defeating the purposes of section 13(a)(1).'' *Id.* at 22–23. Employees who met only the lower ''long test'' salary level, and not the higher short test salary level, were still required to satisfy the default ''long'' duties test, which included a 20 percent limitation on the amount of nonexempt work that could be performed by an exempt employee. While the long test salary level was set based on an analysis of the defined sample, the short test salary level was set in relation to the long test salary. The existence of separate short and long tests—with short test salary levels ranging from approximately 130 to 180 percent of the long test salary levels—remained part of the Department's regulations until 2004.[16] *See* Table A.

In setting the long test salary level in 1958, the Department considered data collected during 1955 WHD investigations on the ''actual salaries paid'' to employees who ''qualified for exemption'' (*i.e.,* met the applicable salary and duties tests), grouped by geographic region, broad industry groups, number of employees, and city size, and supplemented with BLS and Census data to reflect income increases of white collar and manufacturing employees during the period not covered by the Department's investigations. Kantor Report at 6. The Department then set the salary level tests for exempt employees ''at about the levels at which no more than about 10 percent of those in the lowest-wage region, or in the smallest size establishment group, or in the smallest-sized city group, or in the lowest-wage industry of each of the categories would fail to meet the tests.'' *Id.* at 6–7. In other words, the Department set the salary level so that only a limited number of workers performing EAP duties (about 10 percent) in the lowest-wage regions and industries would fail to meet the salary level test and therefore be overtime protected. In laying out this methodology, the Department echoed comments from the Weiss Report that the salary tests ''simplify enforcement by providing a ready method of screening out the obviously nonexempt employees[,]'' and that ''[e]mployees that do not meet the salary test are generally also found not to meet the other requirements of the regulations.'' *Id.* at 2–3. The Department also noted that in our experience misclassification of overtime-protected employees occurs more frequently when the salary levels have ''become outdated by a marked upward movement of wages and salaries.'' *Id.* at 5.

The Department followed a similar methodology when determining the appropriate long test salary level increase in 1963, using data regarding salaries paid to exempt workers collected in a 1961 WHD survey. 28 FR 7002. The salary level for executive and administrative employees was increased to $100 per week, for example, when the 1961 survey data showed that 13 percent of establishments paid one or more exempt executives less than $100 per week, and 4 percent of establishments paid one or more exempt administrative employees less than $100 a week. 28 FR 7004. The professional exemption salary level was increased to $115 per week, when the 1961 survey data showed that 12 percent of establishments surveyed paid one or more professional employees less than $115 per week. *Id.* The Department noted that these salary levels approximated the same percentages used in 1958:

> Salary tests set at this level would bear approximately the same relationship to the minimum salaries reflected in the 1961 survey data as the tests adopted in 1958, on the occasion of the last previous adjustment, bore to the minimum salaries reflected in a comparable survey, adjusted by trend data to early 1958. At that time, 10 percent of the establishments employing executive employees paid one or more executive employees less than the minimum salary adopted for executive employees and 15 percent of the establishments employing administrative or professional employees paid one or more employees employed in such capacities less than the minimum salary adopted for administrative and professional employees.

Id.

The Department continued to use a similar methodology when updating the long test salary level in 1970. After examining data from 1968 WHD investigations, 1969 BLS wage data, and information provided in a report issued by the Department in 1969 that included salary data for executive, administrative, and professional employees,[17] the Department increased the long test salary level for executive employees to $125 per week when the salary data showed that 20 percent of executive employees from all regions and 12 percent of executive employees in the West earned less than $130 a week. 35 FR 884–85. The Department also increased the long test salary levels for administrative and professional employees to $125 and $140, respectively.

In 1975, instead of following these prior approaches, the Department set the long test salary levels based on increases in the Consumer Price Index (CPI), although the Department adjusted the salary level downward ''in order to eliminate any inflationary impact.'' 40 FR 7091. As a result of this recalibration of the 1970 levels, the long test salary level for the executive and administrative exemptions was set at $155, while the professional level was set at $170. The salary levels adopted were intended as interim levels ''pending the completion and analysis of a study by [BLS] covering a six month period in 1975[,]'' and were not meant to set a precedent for future salary level increases. *Id.* at 7091–92. Although the Department intended to increase the salary levels after completion of the BLS study of actual salaries paid to employees, the envisioned process was never completed, and the ''interim'' salary levels remained unchanged for the next 29 years.

As reflected in Table A, the short test salary level increased in tandem with the long test level throughout the various rulemakings since 1949. Because the short test was designed to capture only those white collar employees whose salary was high enough to indicate a stronger likelihood of exempt status and thus warrant a less stringent duties requirement, the short test salary level was always set significantly higher than the long test

[15] These higher salary levels are presented under the ''Short Test'' heading in Table A.

[16] The smallest ratio was in 1963 between the long test salary requirement for professionals ($115) and the short test salary level ($150). The largest ratio was in 1949 between the long test salary requirement for executives ($55) and the short test salary level ($100).

[17] *Earnings Data Pertinent to a Review of the Salary Tests for Executive, Administrative and Professional Employees As Defined in Regulations Part 541,* (1969), *cited in* 34 FR 9935.

salary level. Thus, in 1975 while the long test salary levels ranged from $155 to $170, the short test level was $250.

The salary level test was most recently updated in 2004, when the Department abandoned the concept of separate long and short tests, opting instead for one ''standard'' test, and set the salary level under a new standard duties test at $455 for executive, administrative, and professional employees. Due to the lapse in time between the 1975 and 2004 rulemakings, the salary threshold for the long duties tests (*i.e.,* the lower salary level) did not reflect salaries being paid in the economy and had become ineffective at distinguishing between overtime-eligible and overtime-ineligible white collar employees. For example, at the time of the 2004 Final Rule, the salary levels for the long duties tests were $155 for executive and administrative employees and $170 for professional employees, while a full-time employee working 40 hours per week at the federal minimum wage ($5.15 per hour) at that time earned $206 per week. 69 FR 22164. Even the short test salary level at $250 per week was not far above the minimum wage.

The Department in the 2004 Final Rule based the new ''standard'' duties tests on the short duties tests (which did not limit the amount of nonexempt work that could be performed), and tied them to a single salary test level that was updated from the long test salary (which historically had been paired with a cap on nonexempt work). 69 FR 22164, 22168–69; *see also* 68 FR 15570 (''Under the proposal, the minimum salary level to qualify for exemption from the FLSA minimum wage and overtime requirements as an executive, administrative, or professional employee would be increased from $155 per week to $425 per week. This salary level would be referred to as the 'standard test,' thus eliminating the 'short test' and 'long test' terminology. The separate, higher salary level test for professional employees also would be eliminated.''). The Department concluded that it would be burdensome to require employers to comply with a more complicated long duties test given that the passage of time had rendered the long test salary level largely obsolete. 69 FR 22164; 68 FR 15564–65. The Department believed at the time that the new standard test salary level accounted for the elimination of the long duties test. 69 FR 22167.

In determining the new salary level in 2004, the Department reaffirmed our oft-repeated position that the salary level is the ''best single test'' of exempt status. 69 FR 22165. Consistent with prior rulemakings, the Department relied on actual earnings data and set the salary level near the lower end of the current range of salaries. Specifically, the Department used Current Population Survey (CPS) data that encompassed most salaried employees, and set the salary level to exclude roughly the bottom 20 percent of these salaried employees in each of the subpopulations: (1) The South and (2) the retail industry. Although several prior salary levels were based on salaries of approximately the lowest 10 percent of exempt salaried employees (the Kantor method), the Department stated that the change in methodology was warranted in part to account for the elimination of the short and long duties tests, and because the utilized data sample included nonexempt salaried employees, as opposed to only exempt salaried employees. However, as the Department acknowledged, the salary arrived at by this method was, in fact, equivalent to the salary derived from the Kantor method. 69 FR 22168. Based on the adopted methodology, the Department ultimately set the salary level for the new standard test at $455 per week.

In the 2004 Final Rule the Department also created a test for highly compensated employees, which provided a minimal duties test for workers within the highest compensation range. Reasoning that an especially high salary level negated the need for a probing duties analysis, the Department provided that employees who earned at least $100,000 in total annual compensation (of which at least $455 was paid weekly on a salary or fee basis) were covered by the exemption if they customarily and regularly spent time on one or more exempt duties, and were not engaged in manual work. 69 FR 22172.

In summary, the regulatory history reveals a common methodology used, with some variations, to determine appropriate salary levels. In almost every case, the Department examined a broad set of data on actual wages paid to salaried employees and then set the salary level at an amount slightly lower than might be indicated by the data. In 1940 and 1949, the Department looked to the average salary paid to the lowest level of exempt employees. Beginning in 1958, the Department set salary levels to exclude approximately the lowest-paid 10 percent of exempt salaried employees in low-wage regions, employment size groups, city size, and industry sectors, and we followed a similar methodology in 1963 and 1970. The levels were based on salaries in low-wage categories in order to protect the ability of employers in those areas and industries to utilize the exemptions and in order to mitigate the impact of higher-paid regions and sectors. In 1975, the Department increased the salary levels based on changes in the CPI, adjusting downward to eliminate any potential inflationary impact. 40 FR 7091 (''However, in order to eliminate any inflationary impact, the interim rates hereinafter specified are set at a level slightly below the rates based on the CPI.''). In 2004, the Department raised the salary level to $455 per week using earnings data of full-time salaried employees (both exempt and nonexempt) in the South and in the retail sector. As in the past, the use of lower-salary data sets was intended to accommodate those businesses for which salaries were generally lower due to geographic or industry-specific reasons. This most recent revision eliminated the short and long duties requirements in favor of a standard duties test for each exemption and a single salary level for executive, administrative, and professional employees.

Between 1938 and 1975, the Department increased the salary level every five to nine years. Following the 1975 rulemaking, however, 29 years passed before the salary level was again raised. In the 2004 Final Rule, the Department expressed a commitment to updating the salary levels ''on a more regular basis,'' particularly when ''wage survey data and other policy concerns support such a change.'' 69 FR 22171. Regular updates to the salary level test are imperative to ensuring that the salary level does not become obsolete over time, and providing predictability for employers and employees. Not only does the annualized current salary level of $23,660 a year not reflect increases in nationwide salary levels since 2004, but this figure, as noted above, is below the 2014 poverty threshold of $24,008 per year for a family of four.[18] Moreover, since the salary level test was last increased in 2004, the federal minimum wage has increased three times, from $5.15 to the current rate of $7.25 an hour,[19] raising the wages of overtime-protected employees. The absence of an

[18] The 2014 poverty threshold for a family of four with two related people under 18 in the household. Available at: *http://www.census.gov/hhes/www/poverty/data/threshld/index.html.*

[19] The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, 121 Stat. 112 (Mary 25, 2007), included an amendment to the FLSA that increased the applicable Federal minimum wage under section 6(a) of the FLSA in three steps: To $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009.

increase in the salary level when combined with past (and future) increases to the minimum wage further undermines the effectiveness of the salary level to serve as a line of demarcation between overtime-protected and exempt workers. Mindful of such developments, the Department proposes to increase the salary level annually to ensure the test's ability to serve as an effective dividing line between exempt and nonexempt employees.

ii. Purpose of the Salary Level Requirement

The Department has long recognized that the line of demarcation between the salaries of white collar employees who are overtime-protected and those who are exempt EAP employees cannot be reduced to a standard formula. There will always be white collar overtime-eligible employees who are paid above the salary threshold, and employees performing EAP duties who are paid below the salary threshold. The salary level selected will inevitably affect the number of workers falling into each of these categories. As the Department has noted:

> Inevitably, if the salary tests are to serve their purpose in a situation where salaries and wages have risen, some employees who have been classified as exempt under the present salary tests will no longer be within the exemption under any new tests adopted. Such employees include some whose status in management or the professions is questionable in view of their low salaries. Also included in the group who would not be exempt are employees whose exempt status, on the basis of their duties and responsibilities, is questionable.

Kantor Report at 5. Historically, when setting the lower, long test salary level, the Department strived to ensure that the salary threshold reasonably served to reduce instances where obviously overtime-protected white collar employees were classified as exempt, while avoiding undue exclusions from exemption of employees performing bona fide executive, administrative, and professional duties. In 1949, the Department noted:

> Regulations of general applicability such as these must be drawn in general terms to apply to many thousands of different situations throughout the country. In view of the wide variation in their applicability the regulations cannot have the precision of a mathematical formula. The addition to the regulations of a salary requirement furnishes a completely objective and precise measure which is not subject to differences of opinion or variations in judgment. The usefulness of such a precise measure as an aid in drawing the line between exempt and nonexempt employees, particularly in borderline cases, seems . . . to be established beyond doubt.

Weiss Report at 9. Since 1958, the Department's approach has emphasized minimizing the number of white collar employees performing bona fide EAP duties who are excluded from the exemption by the salary level. This approach was appropriate when there was a long duties test with a specific cap on the amount of time that overtime-ineligible employees could spend performing nonexempt work. However, this approach is not effective in the absence of that limitation, as it does not take into sufficient account the inefficiencies (in terms of the administrative costs of classifying positions) of applying the duties test to large numbers of overtime-eligible white collar employees and the possibility of misclassification of those employees as exempt (and possible litigation costs associated with misclassification).

A thorough review of the regulatory history of the seven previous increases to the salary levels reveals an essentially common methodology to determine the appropriate level, which has been refined periodically in order to better meet the salary level test's goals. In almost every case, the Department considered a broad set of salary data and then set the salary level at an amount slightly lower than the dividing line between exempt and nonexempt that might be indicated by the data, or otherwise set it ''at points near the lower end of the current range of salaries for each of the [EAP] categories.'' Kantor Report at 5. The exact line of demarcation set by the Department, however, has varied, and is guided by practical considerations that allow it to best serve the underlying principles of the exemption, that is, to differentiate exempt and nonexempt white collar employees.

With that objective in mind, the Department proposes to increase the minimum salary level required to qualify for the EAP exemptions from $455 per week to the 40th percentile of weekly earnings for full-time salaried workers ($921 per week).[20] This proposed methodology is conceptually similar to the methodology utilized by the Department in the 2004 Final Rule, which in turn was largely modeled on the salary level methodology first set forth in the Kantor Report in 1958 and used by the Department in nearly every salary level rulemaking thereafter. *See* 69 FR 22167–68; Kantor Report at 6–7. Both the proposed methodology and its predecessors set the salary level based on a percentile of the salaries actually paid to a specified pool of salaried employees.

iii. Sources for the Salary Level Requirement

After a careful review of the guidance articulated in the Department's previous part 541 rulemakings, and observing more than a decade of experience since the 2004 salary level test update, the Department has chosen to rely on the general methodology used in every previous update except 1975, with a few changes designed to simplify and improve the methodology as a tool for differentiating exempt and nonexempt workers. Specifically, in the interest of making the salary methodology simpler and more transparent, the Department is using nationwide CPS data on full-time salaried employees (both exempt and nonexempt) to set the proposed salary level. As discussed *infra,* the Department is not further modifying the sample as we did in 2004. *See* 69 FR 22168.[21]

This is not the first time the Department has modified the methodology, in part because the specific sources of the Department's data have changed over the years. In 1940, the Department considered salary surveys by government agencies, experience under the NIRA, state laws, and federal government salaries. Stein Report at 9, 20–21, 31–32. In 1949, the Department looked at salary data collected by state and federal agencies, including the BLS, and considered wages in small towns and low-wage industries, earnings of federal employees, average weekly earnings for exempt employees, wages of clerical employees, and starting salaries for college graduates. Weiss Report at 10, 13–20. In 1958, the Department used a data set that consisted of data collected during WHD investigations on actual salaries paid to employees who qualified for the exemption, grouped by geographic region, broad industry groups, number of employees, and size of city, and the Department supplemented the investigation data with BLS and Census data on the income increases of white collar and

[20] The BLS sample used for this rulemaking consists of usual weekly earnings for full-time (defined as at least 35 hours per week) non-hourly paid employees. For the purpose of this rulemaking, the Department considers data representing compensation paid to non-hourly workers to be an appropriate proxy for compensation paid to salaried workers.

[21] As discussed *infra,* the CPS data on full-time salaried workers which the Department is now proposing to use excludes certain groups, such as the self-employed, unpaid volunteers, workers under age 16, and members of the military on active duty. However, BLS automatically excludes these groups when it generates the sample. In 2004, the Department took additional steps to exclude other categories of workers from the sample.

manufacturing employees for the period not covered by the Department's investigations. Kantor Report at 6–9. Subsequent salary level updates in 1963 and 1970 followed a similar approach, looking to WHD data on actual salaries paid to exempt employees and augmenting the 1970 analysis with BLS data. 28 FR 7002; 35 FR 884. The Department diverged from our practice of looking to actual salary data in the 1975 rule, when the Department increased the salary levels set in 1970 based on the CPI and adjusted slightly ''in order to eliminate any inflationary impact''; those salary levels, however, were intended to be ''interim'' levels, pending receipt and review of data on actual salary levels. 40 FR 7091.

The Department made some adjustments in 2004 to broaden the data set used, rather than continuing to rely upon WHD's limited enforcement data. The Department continued to carefully review actual salary levels, but did so by using the CPS as the data source. The CPS is a large, statistically robust survey jointly administered by the Census Bureau and BLS, and it is widely used and cited by industry analysts. It surveys 60,000 households a month, covering a nationally representative sample of workers, industries, and geographic areas.[22] Households are surveyed for four months, excluded from the survey for eight months, surveyed for an additional four months, then permanently dropped from the sample. During months 4 and 16 in the sample (the outgoing rotation months), employed respondents complete a supplementary questionnaire (the merged outgoing rotation group or MORG) in addition to the regular survey, which contains the detailed information on earnings necessary to estimate a worker's exemption status. However, because the Department was unable to precisely identify which workers would qualify for the exemption, the Department based the salary level in the 2004 Final Rule on a pool of employees that generally included those full-time salaried employees covered by the FLSA and by the part 541 regulations. Where possible, the Department excluded from our analysis workers who were excluded entirely from the FLSA's overtime requirements or from the salary tests.[23] 69 FR 22167–68. The Department concluded that it was preferable to move away from using a sample limited to exempt salaried employees, as was done in the Kantor method, because in order to create such a pool of likely-exempt salaried employees one would have to rely upon ''uncertain assumptions regarding which employees are actually exempt.'' *Id.* at 22167. In addition, the Department used CPS data rather than salary data from the limited pool of our own investigations because there would have been too few observations from these investigations to yield statistically meaningful results.

In this proposed rule, the Department continues to adhere to the basic methodological principle of looking to actual salaries paid to employees, but as in the 2004 rulemaking, the Department has reexamined the precise contours of the sample to ensure that it is as transparent, accessible, and easily replicated as possible. By moving to an even more standardized sample than the one used in 2004—the proposed rule includes all full-time salaried employees nationwide, without exclusions—the Department seeks to further improve upon the methodology.

The proposed rule uses CPS data comprising all full-time salaried employees to determine the proposed salary levels, and the Department is not further restricting the sample. Inclusion of those employees previously excluded by the Department in 2004 achieves a more robust sample that is more representative of salary levels throughout the economy. For example, while teachers, physicians, lawyers, outside sales employees, and federal employees were excluded from the 2004 sample because they are not subject to the part 541 salary level test, they nonetheless are part of the universe of salaried employees and, as such, their salaries shed light on the salaries paid to employees performing exempt EAP duties. Furthermore, replicating this sample from the CPS public-use files would require no adjustments, making it easier for members of the public to access it and use it.[24] In contrast, the sample from the 2004 rulemaking required filtering out various employees based on interpretations of a number of statutory and regulatory exclusions from coverage or the salary requirement—a process that is inconsistent with the simplification, streamlining, and transparency objectives of the current rulemaking.

Using a broader sample does not diminish the soundness of the ultimate salary level derived. As the Department noted with respect to our change in the sample for the 2004 rulemaking, different ''approaches are capable of reaching exactly the same endpoint [*i.e.,* a percentile that accomplishes the purpose of the salary level test].'' 69 FR 22167.

iv. Setting the Required Salary Level

In addition to looking to a less-restricted sample, this proposed rule also differs from the 2004 Final Rule in that the Department proposes to set the standard salary level at a higher percentile of the salary distribution and relies upon salaries nationwide rather than salaries in a limited geographic area or industry. The Department is also proposing to set the salary level as a percentile of weekly earnings of full-time salaried workers rather than a specific dollar amount because we believe a percentile serves as a better proxy for distinguishing between overtime-eligible and exempt white collar workers as it is rooted in the relative distribution of earnings which are linked to the type of work undertaken by salaried workers. The proposed standard salary level of the 40th percentile of weekly earnings for all full-time salaried employees is higher than the percentile used by the Department in either the 2004 Final Rule or the Kantor method. In the 2004 Final Rule, the Department set the required standard salary level at approximately the 20th percentile of salaried employees in the South region and in the retail industry, and in 1958, using the Kantor method which had both the long and short tests, the Department set the required salary level at approximately the 10th percentile of exempt EAP workers' salaries in low-wage regions, employment size groups, city size, and industries. As explained in the 2004 Final Rule, those two methods produced roughly equivalent salary levels when taking into account their differing samples. *See* 69 FR 22167–68; Kantor Report at 6. Applying

[22] *http://www.census.gov/cps*; *http://www.census.gov/cps/methodology*.

[23] The 2004 pool of salaried employees excluded: (1) The self-employed, unpaid volunteers and religious workers who are not covered by the FLSA; (2) agricultural workers, certain transportation workers, and certain automobile dealership employees who are exempt from overtime under other provisions of the Act; (3) teachers, academic administrative personnel, certain medical professionals, outside sales employees, lawyers and judges who are not subject to the part 541 salary tests; and (4) federal employees who are not subject to the part 541 regulations. 69 FR 22168.

[24] The Department notes that the public will not be able to exactly replicate the weekly earnings and percentiles used in this NPRM from the public-use data files made available by BLS. As with all BLS data, to ensure the confidentiality of survey respondents, data in the public-use files use adjusted weights and therefore minor discrepancies between internal BLS files and public-use files exist. BLS publishes quarterly the earnings deciles of full-time salaried workers on which the Department relies to set the proposed salary level at *http://www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm*.

these methods today would result in salary levels of $577 per week (2004 method) or $657 per week (Kantor method), which would equate to approximately the 15th and 20th percentiles of weekly earnings for all full-time salaried workers.

However, the higher percentile proposed here is necessary to correct for the current pairing of a salary based on the lower salary long test with a duties test based on the less rigorous short duties test, and ensure that the proposed salary is consistent with the Department's longstanding goal of finding an appropriate line of demarcation between exempt and nonexempt employees. *See, e.g.,* Weiss Report at 11 (''The salary tests in the regulations are essentially guides to help in distinguishing bona fide executive, administrative, and professional employees from those who were not intended by the Congress to come within these categories.''). Currently, approximately 85 percent of white collar salaried workers who fail the EAP duties test earn at least $455 per week. Because the current salary level is only screening from exemption approximately 15 percent of overtime-eligible white collar salaried employees, it is not an effective test for exemption and does not serve the intended purpose of simplifying application of the exemption by reducing the number of employees for whom employers must perform a duties analysis. Increasing the standard salary level to the 40th percentile of weekly earnings for full-time salaried workers would reduce by 6.3 million the number of white collar employees whose exemption status currently can only be determined by applying the duties test.[25] Conversely, only approximately 4 percent of all white collar salaried employees who meet the duties test earn less than the current salary level. The proposed increase in the standard salary level would increase the number of overtime-eligible white collar salaried employees who meet the duties test and earn less than the proposed salary level to approximately 25 percent.

The proposed percentile diverges from the percentiles adopted in both the 2004 Final Rule and the Kantor method because it more fully accounts for the Department's elimination of the long duties test. As discussed in detail below, the Department acknowledged in the 2004 Final Rule that it was necessary in setting the salary level to account for the shift to a single standard duties test that was equivalent to the less rigorous short duties test. The Department intended the change from the 10th to the 20th percentile to address, in part, the elimination of the long duties test. 69 FR 22167. The Department also intended this change, however, to account for the use of a different data set. 69 FR 22168. Based on further consideration of our analysis of the 2004 salary, the Department has now concluded that the $455 salary level did not adequately account for both the shift to a sample including all salaried workers covered by the part 541 regulations, rather than just EAP exempt workers, *and* the elimination of the long duties test that had historically been paired with the lower salary level. Accordingly, this proposal is intended to correct for that error by setting a salary level that fully accounts for the fact that the standard duties test is significantly less rigorous than the long duties test and, therefore, the salary threshold must play a greater role in protecting overtime-eligible employees. This proposal is also responsive to the President's desire to simplify the exemption, and it addresses the Department's concern that overtime-eligible workers may be misclassified as exempt based solely on the salaries they receive.

This is the first time that the Department has needed to correct for such a mismatch between the existing salary level and the applicable duties test. Under the old short test/long test structure, the Department routinely focused on setting a long test salary level that would minimize the number of employees performing bona fide EAP duties deemed overtime-eligible based on their salaries (keeping the number of such excluded employees to about 10 percent of those who qualified for exemption based upon their duties). This approach was possible because the long duties test included a limit on the amount of nonexempt work that could be performed and thus provided an adequate safeguard against the exemption of white collar workers who should be overtime-protected but who exceeded the salary level. The creation of a single standard test based on the less rigorous short duties test caused new uncertainty as to what salary level is sufficient to ensure that employees intended to be overtime-protected are not subject to inappropriate classification as exempt, while minimizing the number of employees disqualified from the exemption even though their primary duty is EAP exempt work.

A brief history of the long duties test illustrates the importance of offsetting its elimination with a corresponding increase in the salary level. The so-called long test was the sole test for all employees until 1949. The Department devised a separate short test in 1949 to supplement the long test with a short-cut, more permissive, method for determining exempt status for only those employees meeting a higher salary requirement. For example, the long duties test in effect from 1949 to 2004 for administrative employees required that an exempt employee: (1) Have a primary duty consisting of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; (2) customarily and regularly exercise discretion and independent judgment; (3) regularly and directly assist a proprietor or a bona fide executive or administrative employee, or perform under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or execute under only general supervision special assignments and tasks; and (4) not devote more than 20 percent (or 40 percent in a retail or service establishment) of hours worked in the workweek to activities that are not directly and closely related to the performance of the work described above. 29 CFR 541.2 (2003). By contrast, the short duties test in effect during the 1949 to 2004 period provided that an administrative employee paid at or above the short test salary level qualified for exemption if the employee's primary duty consisted of the performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers which includes work requiring the exercise of discretion and independent judgment. *Id.*

Between 1949 and 2004, employers were only able to claim the exemption based on the less-stringent short duties test for employees who were paid a specified higher salary level. The Department reasoned that, ''in the categories of employees under consideration the higher the salaries paid the more likely the employees are to meet all the requirements for exemption, and the less productive are the hours of inspection time spent in analysis of the duties performed.'' Weiss Report at 22. The original, more thorough duties test became known as the long test, and remained for decades

[25] These workers are salaried, white collar workers who do not satisfy the EAP duties tests and who earn at least $455 per week but less than the proposed salary level. Some workers in this group may be overtime ineligible due to another non-EAP exemption.

the test employers were required to satisfy for those employees whose salary was insufficient to meet the higher short test salary level.

Apart from the differing salary requirements, the most significant difference between the short test and the long test was the long test's limit on the amount of time an exempt employee could spend on nonexempt duties while allowing the employer to claim the exemption. For all three EAP exemptions, the long duties test imposed a limit on nonexempt duties. A bright-line, 20 percent cap on nonexempt work was instituted in 1940 for executive and professional employees, and in 1949 for administrative employees.[26] The short duties tests did not include a limitation on nonexempt work because employees paid the higher short test salary level were likely to ''meet all of the requirements of the Administrator's basic definitions of exempt employees, including the requirements with respect to nonexempt work.'' Weiss Report at 23. The Department reasoned that if the test were to exempt those for whom ''the nonexempt work is substantial,'' this would be ''contrary to the objectives of the Fair Labor Standards Act.'' *Id.* at 33.

In 2004 the Department discontinued the use of the long duties test because it had effectively become dormant due to the passage of time since the required salary level had last been raised in 1975, and because the Department believed that reinstituting it would be administratively burdensome. Instead the Department essentially adopted the short duties tests as the standard duties tests, stating that the new standard duties tests ''are substantially similar to the current short duties tests,'' 69 FR 22214, and that ''it is impossible to quantitatively estimate the number of exempt workers resulting from the *de minimis* differences in the standard duties tests compared to the current short duties tests.'' *Id.* at 22192–93. The Department recognized the need to adjust the salary percentile previously used to set the long test salary level upward to account for the transition to a single more lenient duties test. Indeed, the Department stated that the increase to the 20th percentile instead of the 10th percentile was intended to account for two changes made in 2004: ''because of the proposed change from the 'short' and 'long' test structure and because the data included nonexempt salaried employees.'' 69 FR 22167; *see* 68 FR 15571. However, although the Department recognized the need to make an adjustment because of the elimination of the long duties test, the amount of the increase in the required salary actually only accounted for the fact that the data set used to set the salary level included nonexempt workers while the Kantor method considered only the salaries paid to exempt employees. As the data tables in the 2004 Final Rule show, a salary of $455 excluded from the exemption 20.2 percent of all salaried employees in the South and 20.0 percent of all salaried employees in retail. 69 FR 22169, Table 3. However, that same $455 salary level excluded only 8.2 percent of likely exempt employees in the South and 10.2 percent of likely exempt employees in retail. 69 FR 22169, Table 4. In other words, ''by setting a salary level excluding from the exemptions approximately the lowest *20 percent* of all salaried employees, rather than the Kantor report's *10 percent* of exempt employees,'' the Department in 2004 actually adopted a percentile that produced a salary amount roughly equivalent to the long test salary yielded at the 10th percentile using the Kantor method's data set. *Id.* at 22168 (emphases in original). The Department had not, in fact, made any additional adjustment to account for the elimination of the long duties test.

Thus, although the Department had identified the need to adjust the required salary percentile to account for the elimination of the long duties test, the Department effectively paired the short test's less stringent duties requirements with the lower salary level historically associated with the long duties test.[27] The long duties tests had limited the amount of nonexempt work that could be performed by employees for whom the employer claimed the EAP exemption; only employees who were paid the higher short test salary level were not required to meet the nonexempt duties caps. Because the standard duties tests do not contain a cap on the amount of nonexempt work that may be performed, after the 2004 rulemaking the salary level test must play a larger role in screening out overtime-protected white collar employees.

While the role of the salary level test as an initial test for exemption increased in 2004, the Department has always recognized the impact of the threshold on overtime-eligible white collar employees. In the Stein Report, the Department looked at the impact of various salary thresholds on overtime-eligible bookkeepers, noting that approximately 50 percent of surveyed bookkeepers earned more than the then applicable $30 weekly salary threshold, while that number decreased to approximately 8 percent at the $50 dollar level at which the applicable salary level was ultimately set. Stein Report at 32. The Department went on to note that evidence that a salary of $50 ''would not also exclude persons who properly deserve the exemption is illustrated by the fact that almost 50 percent of the accountants and auditors [many of whom are properly considered administrative or professional] earn at least $50 a week.'' *Id.* Similarly, the Weiss Report noted that ''[a]nother guide of value in determining the appropriate levels of a salary test for administrative and professional employees is the probable percentage of persons in clerical, subprofessional, or other nonexempt occupations who would meet the various salary requirements. The salary level adopted must exclude the great bulk of nonexempt persons if it is to be effective.'' Weiss Report at 18. The Weiss Report went on to look at salaries paid to bookkeepers in New York and nine other surveyed cites and noted that, at a salary of $80 per week, some hand-bookkeepers in 9 of the 10 cities surveyed would exceed the salary level; at $75 per week, the salary test would be met by some hand-bookkeepers in all 10 cities. The report noted that the data ''all tend to indicate that a salary requirement of about $75 or $80 a week for administrative employees is necessary in order to provide adequate protection against misclassification since many obviously nonexempt employees earn salaries at or near these figures.'' *Id.* The Department set the salary level for administrative employees at $75 per week.

The Department's 2004 pairing of the lower long test salary level with the short test duties requirements also runs contrary to the Department's rationale for the short duties test that ''the higher the salaries paid the more likely the employees are to meet all the requirements for exemption,'' and at ''the higher salary levels in such classes of employment, the employees have almost invariably been found to meet all

[26] By statute, beginning in 1961, retail employees could spend up to 40 percent of their hours worked performing nonexempt work and still be found to meet the duties tests for EAP exemption. 29 U.S.C. 213(a)(1).

[27] Throughout both the 2003 NPRM and 2004 Final Rule, the Department emphasized that it was increasing the standard salary level from the $155 long test salary level last previously updated in 1975. *See, e.g.,* 68 FR 15570; 69 FR 22123 (''The final rule nearly triples the current $155 per week minimum salary level required for exemption to $455 per week.''); *id.* at 22171. Neither the 2003 NPRM nor the 2004 Final Rule compared the magnitude of the new standard salary level against the former $250 per week short test salary level.

the other requirements of the regulations for exemption.'' Weiss Report at 22. Further, in establishing the short test the Department cautioned that ''the salary level must be high enough to include only those persons about whose exemption there is normally no question.'' *Id.* at 23. Setting the standard salary level at the 40th percentile of earnings for full-time salaried workers would effectively correct for the Department's establishment in the 2004 Final Rule of a single standard duties test that was equivalent to the former short duties test without a correspondingly higher salary level. In the absence of the protection provided by the long duties test, the lower salary level increased the risk that employees who should be entitled to overtime protection might be inappropriately classified as exempt and denied that protection. The lower salary level associated with the former long duties test was never intended to ensure that the employees earning that amount meet ''all the requirements for exemption . . . including the requirement with respect to nonexempt work.'' *Id.* at 22–23. Therefore, without a more rigorous duties test, the salary level set in the 2004 Final Rule is inadequate to serve the salary's intended purpose of the ''drawing of a line separating exempt from nonexempt employees[.]'' 69 FR 22165.

The importance of adjusting the salary level threshold upward to account for the lack of a long duties test is illustrated by the Department's *Burger King* litigation in the early 1980's, when the long test was still actively in use. The Department brought two actions arguing that Burger King restaurants in the northeast had misclassified their assistant managers as exempt executive employees and that these employees were, in fact, entitled to overtime protection. *Sec'y of Labor* v. *Burger King Corp.,* 675 F.2d 516 (2d Cir. 1982); *Sec'y of Labor* v. *Burger King Corp.,* 672 F.2d 221 (1st Cir. 1982). The assistant managers at issue all performed the same duties, which included spending significant amounts of time performing the same routine, nonexempt work as their subordinates. One group of assistant managers was paid between $155 and $249 per week—and therefore subject to the long duties test; the other group was paid $250 or more—and therefore subject to the short duties test. The Department argued that neither group of assistant managers had management as their primary duty. Both appellate courts found that the employees did have management as their primary duty; however, for the lower paid group, both courts found the employees to be overtime protected because they spent more than 40 percent of their time performing nonexempt work and therefore did not satisfy the requirements of the long duties test. Accordingly, the lower paid employees were protected by application of the more rigorous long duties test, while the higher paid employees were found to be exempt under the easier short duties test. If the less rigorous short duties test had been paired with the long test's lower salary threshold—as the Department did in 2004—the lower paid assistant managers would have lost their overtime protection.

The continued extensive litigation regarding employees for whom employers assert the EAP exemption also demonstrates that using the 20th percentile of salaried employees in the South and in retail as the threshold has not met the Department's goals as stated in the 2004 Final Rule of simplifying enforcement and reducing litigation. *Id.* According to a recent Government Accountability Office (GAO) report, statistics from the Federal Judicial Center show that the number of wage and hour lawsuits filed in federal courts ''has increased substantially, with most of this increase occurring in the last decade.'' GAO–14–69, ''Fair Labor Standards Act,'' December 2013, at 2, 6.[28] A ''total of 8,148 FLSA lawsuits [were] filed in fiscal year 2012. Since 2001, when 1,947 FLSA lawsuits were filed, the number of FLSA lawsuits has increased sharply.'' *Id.* at 6. Stakeholders advised GAO that one of the reasons for the increased litigation was employer confusion about which workers should be classified as EAP exempt. *Id.* at 11. Adjusting the salary level upward to account for the absence of a more rigorous duties test will ensure that the salary threshold serves as a more clear line of demarcation between employees who are entitled to overtime and those who are not, and will reduce the number of white collar employees who may be misclassified and therefore decrease litigation related to application of the EAP duties test. At the 40th percentile of full-time salaried workers, there will be 10.9 million fewer white collar employees for whom employers could be subject to potential litigation regarding whether they meet the duties test for exemption (4.6 million who would be newly entitled to overtime due to the increase in the salary threshold and 6.3 million who previously failed the duties test and would now also fail the salary level test).

As discussed previously, the salary component of the EAP test for exemption has always worked hand-in-hand with the duties test in order to simplify the application of the exemption. At a lower salary level, more overtime-eligible employees will exceed the salary threshold, and a more rigorous duties test would be required to ensure that they are not classified as falling within an EAP exemption and therefore denied overtime pay. At a higher salary level, more employees performing bona fide EAP duties will become entitled to overtime because they are paid a salary below the salary threshold. Setting the salary threshold too low reduces the risk that workers who pass the duties test become entitled to overtime protection, but does so at the cost of increasing the number of overtime-eligible employees exceeding the salary level who are subject to the duties test and possible misclassification. In contrast, setting the salary level too high reduces the number of overtime-protected employees subject to the duties test and eliminates their risk of misclassification, but at the cost of requiring overtime protection for workers who pass the duties test. With those concerns in mind, the Department has reviewed a variety of data sources to ascertain the appropriate amount to increase the required salary level in order to ensure that it works effectively with the standard duties tests to distinguish between overtime-eligible white collar employees and employees performing bona fide EAP duties.

In the 1949, 1958, 1963, 1970 and 1975 updates to the salary level, all of which featured a long test/short test structure, the short test salary level was set at approximately 130 to 180 percent of the long duties test salary level to adequately establish a salary level that obviated the need to engage in a more probing duties analysis. To remedy the Department's error from 2004 of pairing the lower long test salary with the less stringent short test duties, the Department is setting the salary level within the range of the historical short test salary ratio so that it will work appropriately with the current standard duties test. The Department recognizes that the proposed salary amount is only about 140 percent of the long duties test salary level under the Kantor method, and thus may be viewed as slightly out of line with the historic average of approximately 150 percent of the long test at which the short-test salary has

[28] *http://gao.gov/products/GAO-14-69.*

been set.[29] This suggests that a salary significantly lower than the 40th percentile of full-time salaried workers would pose an unacceptable risk of inappropriate classification of overtime-protected employees without a change in the standard duties test. The Department believes that setting the salary level at the 40th percentile of weekly wages for all full-time salaried employees will result in a salary threshold that properly distinguishes between employees who may meet the duties requirements of the EAP exemption and those who likely do not, without necessitating a return to the more detailed long duties test. The Department notes that currently approximately 75 percent of white collar employees who do not meet the duties test earn less than the proposed salary threshold. The Department believes that the 40th percentile is appropriate because there is no longer a lower salary/long duties test for EAP exemption to which employers can turn if employees do not satisfy the standard salary level. By proposing a lower salary level than traditionally used for the short duties test, the Department intends to minimize the potential that additional bona fide exempt employees might become entitled to overtime because they fall below the proposed salary level. The Department notes that currently approximately 78 percent of all exempt EAP workers—those who are paid on a salary basis of at least $455 per week and meet the duties test—earn at least $921 per week.

This salary level also accounts for the fact that the salary threshold will apply to all employees nationwide, including employees who work in low-wage regions and low-wage industries. In this rulemaking, we are proposing a salary level of the 40th percentile of the weekly wages of all full-time salaried workers nationwide. The Department believes that setting the salary level based on nationwide salary data is consistent with the goals of modernizing and simplifying the regulations. Using nationwide salary data will also produce a salary level appropriate to both low- and high-wage areas and industries. While the proposed salary level is lower than the average historical short test salary ratio under the Kantor method, a higher percentile more in line with the historical short duties test could have a negative impact on the ability of employers in low-wage regions and industries to claim the EAP exemptions for employees who have bona fide executive, administrative, or professional duties as their primary duty, particularly in the absence of a long duties test as an alternative. As will be discussed in section VII.D., the Department believes this proposal is appropriate in low-wage areas and low-wage industries.

The proposal also is consistent with the Department's practice in prior rulemakings, including the 2004 Final Rule, of establishing a national salary level, rather than multiple levels for different regions or industries. As stated in the 2004 Final Rule, the Department does not believe that having different salary levels for different areas of the country or for different kinds or sizes of businesses ''is administratively feasible because of the large number of different salary levels this would require.'' 69 FR 22171. The Department came to the same conclusion in 1940 when the Department rejected suggestions for varying salary levels, stating that it would present serious difficulties in enforcement, and that the FLSA is a national law that cannot take

> into account every small variation occurring over the length and breadth of the country. To make enforcement possible and to provide for equity in competition, a rate should be selected . . . which will be reasonable in light of average conditions for industry as a whole. In some instances the rate selected will inevitably deny exemption to a few employees who might not unreasonably be exempted, but, conversely, in other instances it will undoubtedly permit the exemption of some persons who should properly be entitled to the benefits of the act.

Stein Report at 6; *see* Weiss Report at 9 (''Regulations of general applicability such as these must be drawn in general terms to apply to many thousands of different situations throughout the country.'').

Setting the salary level at the 40th percentile of full-time salaried workers places it far enough above the minimum wage to provide an effective means of screening out workers who should be overtime protected. As the Stein Report noted, ''[i]t must be assumed that [executive employees] enjoy compensatory privileges and this assumption will clearly fail if they are not paid a salary substantially higher than the wages guaranteed as a mere minimum under section 6 of the act.'' Stein Report at 19. Furthermore, the failure to require a salary level of substantially more than the minimum wage would ''invite evasion of section 6 and 7 for large numbers of workers to whom the wage-and-hour provisions should apply.'' *Id.* Accordingly, following each update from 1949 to 1975 (those which included a short duties test similar to the current standard test), the ratio of the short test salary level to the earnings of a full-time, nonexempt, minimum wage worker equaled between approximately 3.0 and 6.25.[30] *See* Table B. For instance, the ratio was its highest in 1949 at 6.25 ($100 salary level divided by the product of $0.40 and 40 hours) and its lowest in 1975 at 2.98 ($250/($2.10 × 40)). Because the 2004 standard salary level was based on the 1975 long test salary and not the short test salary, it deviated from the pattern observed over the previous decades, resulting in a salary threshold of just 2.21 times full-time minimum wage earnings ($455/($5.15 × 40)). The proposed salary level is 3.18 times full-time minimum wage earnings ($921/($7.25 × 40)), which is consistent with the historical average. Therefore, the Department believes that the proposed salary level is appropriate in comparison with prior minimum wage ratios.

TABLE B—RATIOS OF SALARY TEST LEVELS TO FULL-TIME MINIMUM WAGE EARNINGS

Year	Minimum wage (MW)	MW earnings for a 40-hour work-week	Exempt short test salary level	Ratio of short salary test to MW earnings
1949	$0.40	$16	$100	6.25
1958	1.00	40	125	3.13

[29] The Department estimated the average historic ratio of 149 percent as the simple average of the fifteen historical ratios of the short duties salary level to the long duties salary level (salary levels were set in 5 years and in each year the salary level varied between the three exemptions: executive, administrative, and professional). If the Department had weighted the average ratio based on the length of time the historic salary levels were in effect, this would have yielded an average historic ratio of 152 percent.

[30] The 6.25 ratio is an outlier that was set in December 1949 (when the short test was created) and the minimum wage increased from $.40 to $.75 per hour one month later (which reduced the ratio to 3.33). To return to the 6.25 ratio, the weekly salary level would have to be set at $1,812.50, which is around the 80th percentile of all full-time salaried employees.

TABLE B—RATIOS OF SALARY TEST LEVELS TO FULL-TIME MINIMUM WAGE EARNINGS—Continued

Year	Minimum wage (MW)	MW earnings for a 40-hour work-week	Exempt short test salary level	Ratio of short salary test to MW earnings
1963	1.25	50	150	3.00
1970	1.60	64	200	3.13
1975	2.10	84	250	2.98
Year	Minimum wage (MW)	MW earnings for a 40-hour workweek	Exempt short test salary level	Ratio of short salary test to MW earnings
2004	$5.15	$206	$455	2.21
2015	7.25	290	921 (proposed)	3.18

Moreover, the median earnings for all salaried workers provides further support for the proposed salary level. The Weiss Report observed approvingly that in the Stein Report, the ''dividing line [between subprofessional and professional employees was] based on the midpoint salaries'' of federal government service classifications of administrative and professional employees, and thus suggested that a midpoint value of the aggregated earnings of such workers is an appropriate benchmark for the salary level. Weiss Report at 16–17 (referencing Stein Report at 43). In 1947, 1962, 1969, and 2003, data showing median increases in earnings for all employees in various industries were generated and considered instructive to a determination of an appropriate salary level.[31] The 2013 national median earnings for all full-time salaried workers was $1,065 per week, giving support to the Department's proposed salary level of $921. Thus, using median earnings as a point of comparison supports that the 40th percentile of full-time salaried workers would provide an appropriate line of demarcation between overtime-eligible white collar employees and potentially exempt EAP employees.

The Department's proposed salary level is further supported by its increased ability to distinguish overtime-eligible employees. The primary objective of the salary level test has always been the drawing of a line separating overtime-eligible white collar salaried employees from employees who may be bona fide EAP employees. At the current salary threshold, there are 11.6 million salaried white collar workers who are overtime protected but are paid at or above the $455 salary level and therefore must be subjected to a duties analysis to determine their overtime eligibility. At the proposed salary level, the number of overtime-eligible salaried white collar employees paid at or above the salary level would be reduced by more than 50 percent. Thus a salary level at the 40th percentile of weekly earnings for salaried workers would be more efficient at distinguishing overtime-eligible employees.

v. Alternatives Considered

While the Department has largely followed historical precedent in determining the proposed salary threshold by basing it on the level of salaries that employers currently pay and making only modest changes to our time-tested model, the Department did consider other approaches to determine the appropriate salary test level.[32] First, the Department considered adjusting either the 2004 standard salary test level or the 1975 short test salary level for inflation using the CPI, similar to the methodology used to set the salary levels in the 1975 interim update. The Department noted in 1975 that ''[t]he rapid increase in the cost of living since the salary tests were last adjusted justifies an interim increase in those tests . . . [and] the widely accepted [CPI] may be utilized as a guide for establishing these interim rates.'' 40 FR 7091. However, the Department noted at that time that the adoption of interim rates, while necessary to expeditiously provide protection for workers affected by a salary level rendered obsolete by rapid cost-of-living changes, was not considered a precedent for future rulemaking (and those same inflationary conditions do not exist today). *Id.* at 7092. In other years, however, the Department has looked at inflation when increasing the salary level, but has never established the actual numerical salary level based on inflation.

The Department has thus recognized that measures of inflation and losses in purchasing power provide helpful background for setting the salary level because they indicate how far the levels erode between updates and underscore the need for an update. They can also point very generally to ranges in which new salary levels might be considered. Indeed, with respect to the current rulemaking, looking at inflation provides added support for the proposed salary level. Updating the 2004 standard salary level for inflation based on the Consumer Price Index for all urban consumers (CPI–U) would result in a salary level of $561 per week (approximately the 15th percentile of weekly earnings for all full-time salaried workers). Updating the 1975 short test salary level with the CPI–U would result in a salary level of $1,083 per week (approximately the 50th percentile of weekly earnings for all full-time salaried workers). Considering that the standard test most closely approximates the historic short duties test, looking at an inflation adjustment would support a higher salary level than that being proposed. However, inflation has been used as a method for setting the precise salary level only in the breach, as in 1975 when practical considerations prevented a more complete analysis of actual salaries. The Department continues to believe that looking to the actual earnings of workers provides the best evidence of the rise in prevailing salary levels and, thus, constitutes the best source for setting the proposed salary requirement. This viewpoint reflects guidance from previous updates, including the Weiss Report, where the Department rejected suggestions to base the salary level on the change in the cost of living. Weiss Report at 12 (''The change in the cost of living which was urged by several witnesses as a basis for determining the appropriate levels is, in

[31] Statistical Materials Bearing on the Salary Requirement in Regulations Part 541 (1947), at 2, 6, 27–30, 56–57; Salary Tests for EAP Employees DOL Report—Wage and Hour Public Contracts Division (1962), at 3, 7–15, 18, 20; Salary Tests WHD Report (1969), at 19, 48.

[32] The alternatives the Department considered are discussed in more detail in section VII.C.

my opinion, not a measure for the rise in prevailing minimum salaries.'').

The Department also considered setting the salary level using the 2004 method (20th percentile of full-time salaried employees in the South and retail) or Kantor method (10th percentile of likely exempt employees in low-wage regions, employment size groups, city size, and industries). While these methods produced similar salaries in 2004 when the Department last revised the salary levels, over time they have diverged significantly and today would result in salaries of $577 and $657 per week, respectively (approximately the 15th and 20th percentiles of weekly earnings for all full-time salaried workers). Because the Kantor method was based on the long test duties requirements (which limited the amount of nonexempt work that EAP employees could perform), the Department concluded that the resulting salary level was inappropriately low when paired with the standard duties test (which was based on the short test). For similar reasons the Department concluded that the 2004 method (which paired the lower long test salary level with a standard duties test based on the short duties test) also resulted in an inappropriately low salary level.

The Department further considered setting the standard salary level equal to the median earnings for all full-time wage and salaried workers combined (*i.e.,* not just salaried, also workers paid by the hour). This median provides a rough dividing line between the generally lower-paid hourly workers who are overtime protected and the generally higher-paid salaried workers who may be exempt. The national median earnings for all full-time workers, both wage and salary, in all occupations and industries, and across metropolitan and rural areas, was $776 per week (approximately the 30th percentile of weekly earnings for all full-time salaried workers). The Department concluded, however, that it would not be appropriate to include the wages of hourly workers in setting the EAP salary threshold and that the resulting salary level was too low to work effectively with the standard duties test.

The Department also considered updating the Kantor long test salary level of $657 to a short test level, reflecting the historical relationship of the short test to the long test which has ranged from approximately 130 percent to 180 percent of the long test level and averaged approximately 150 percent. This would result in a salary level between $854 and $1,183 per week, with the historical average yielding a salary level of $979 per week. The end points of the historical range are approximately the 35th and 55th percentiles of weekly earnings for all full-time salaried workers, respectively. While the Department thought that salaries throughout this historical salary range would work appropriately with the standard duties test, we were concerned that the top end of the resulting range would be too high for low-wage regions and industries, particularly because employers no longer have a long duties test to fall back on for purposes of exempting lower-salaried workers performing bona fide EAP duties.

Finally, the Department considered setting the standard salary equal to the 50th percentile, or median, of weekly earnings for all full-time salaried workers. This method would be similar to the proposed method but would use a higher percentile. Using the 50th percentile would result in a standard salary level of $1,065 per week. The Department believes that the salary level generated with this method would be too high for low-wage regions and industries, particularly in light of the absence of a lower salary long duties test.

When measured against inflation or previous methods of setting the salary levels (standard, short, and long), the proposed salary level is within the range that was the historical norm until the 2004 update. For instance, this level falls well below the 1975 inflation-adjusted short test level ($1,083 per week) and is lower than the salary level comparable to the average historical ratio between the short and long test salary ($979 per week). But the proposed salary exceeds the inflation-adjusted 2004 salary level and the levels suggested by the Kantor and 2004 methods (all of which were based on the long test salary). While, for the reasons stated herein, none of these alternative measures was used as a methodology to establish the proposed salary test level, they confirm that the 40th percentile of weekly earnings of all full-time salaried employees ($921) proposed by the Department is in line with previous updates.

vi. Summary of Proposed Change to Standard Salary Level

Therefore, for the reasons stated above, the Department proposes to increase the standard salary level to qualify for exemption from the FLSA minimum wage and overtime requirements as an executive, administrative, or professional employee from $455 a week to the weekly earnings of the 40th percentile of full-time salaried employees ($921 a week). The Department reached the proposed salary level after considering available data on actual salary levels currently being paid in the economy. The Department believes that, in view of the regulatory history and all other relevant considerations, using the earnings of all full-time salaried workers (exempt and nonexempt) as the basis for setting the proposed salary level is appropriate here, and setting the salary level at the 40th percentile establishes an appropriate dividing line helping differentiate between white collar workers who are overtime-eligible and those who are not.

The Department invites comments on this proposed salary level and on any alternative salary level amounts, or methodologies for determining the salary level, that appropriately distinguish between overtime-eligible white collar workers and bona fide EAP workers. In addition, the Department invites comments on the effectiveness of the proposed salary level to *both* limit the number of employees who pass the EAP duties tests but become overtime eligible because of the increased salary level, and reduce the number of employees who fail the EAP duties test but are subject to a duties analysis and possible misclassification by their employers.

B. Special Salary Tests

i. American Samoa

The Department has historically applied a special salary level test to employees in American Samoa because minimum wage rates in that jurisdiction have remained lower than the federal minimum wage. *See* 69 FR 22172. Prior to July 24, 2007, industry-specific minimum wage rates for American Samoa were set by a special industry committee appointed by the Department. *See* Sec. 5, Pub. L. 87–30, 75 Stat. 67 (May 5, 1961). The Fair Minimum Wage Act of 2007 replaced this methodology with a system of incremental increases. *See* Sec. 8103, Pub. L. 110–28, 121 Stat. 188 (May 25, 2007). As amended, this law provides that the American Samoa minimum wage for each industry will increase by $0.50 on September 30, 2015, and continue to increase every three years thereafter until each equals the federal minimum wage. *See* Sec. 4, Pub. L. 112–149, 126 Stat. 1145 (July 26, 2012). The minimum wage in American Samoa currently ranges from $4.18 to $5.59 an hour depending on the industry,[33] and

[33] *See* WHD Minimum Wage Poster for American Samoa, available at *http://www.dol.gov/whd/minwage/americanSamoa/ASminwagePoster.pdf.*

so the disparity with the federal minimum wage is expected to remain for the foreseeable future. Accordingly, the Department proposes to maintain a special salary level test for employees in American Samoa.

Consistent with our practice since 1975, in the 2004 Final Rule the Department set the special salary level test for employees in American Samoa at approximately 84 percent of the standard salary test level—which computed to $380 per week. *See* 69 FR 22172. The Department believes that our approach in the 2004 Final Rule remains appropriate given the continued gap between American Samoa and federal minimum wage rates. Accordingly, the Department proposes to set the American Samoa special salary level test at $774, which equals approximately 84 percent of the proposed standard salary level of the 40th percentile of weekly earnings for full-time salaried workers ($921). The Department also proposes that when the minimum wage rate for any industry in American Samoa equals the federal minimum wage, the standard salary level will then apply in full for all EAP employees in all industries in American Samoa.

The Department invites comments on this special salary level proposal.

ii. Motion Picture Producing Industry

The Department currently permits employers to classify as exempt employees in the motion picture producing industry who are paid at a base rate of at least $695 per week (or a proportionate amount based on the number of days worked), so long as they meet the duties tests for the EAP exemptions. § 541.709. This exception from the ''salary basis'' requirement was created to address the ''peculiar employment conditions existing in the [motion picture] industry'' (18 FR 2881 (May 19, 1953)), and applies, for example, when a motion picture industry employee works less than a full workweek and is paid a daily base rate that would yield at least $695 if six days were worked. *Id.* The Department has provided this industry-specific exception to the salary basis requirement since 1953. 18 FR 3930 (July 7, 1953).

In the 2004 Final Rule the Department increased the base rate for motion picture industry employees by the same percentage that the salary level tests, on average, increased.[34] *See* 69 FR 22190. Consistent with the 2004 Final Rule methodology, the Department proposes to increase the required base rate proportionally to the proposed increase in the standard salary level test. The Department is proposing to increase the standard salary level by approximately 102 percent—from $455 to $921. Accordingly, in § 541.709, the Department proposes to increase the current base rate for employees in the motion picture industry by approximately 102 percent—from $695 to $1,404 per week (or a proportionate amount based on the number of days worked).

The Department invites comments on this base rate proposal.

C. Inclusion of Nondiscretionary Bonuses in the Salary Level Requirement

The Department has consistently assessed compliance with the salary level test by looking only at actual salary or fee payments made to employees and, with the exception of the highly compensated test, has not included bonus payments of any kind in this calculation. During stakeholder listening sessions several business representatives asked the Department to include nondiscretionary bonuses and incentive payments as a component of any revised salary level requirement. These stakeholders conveyed that nondiscretionary bonuses and incentive payments are an important component of employee compensation in many industries and stated that such compensation might be curtailed if the standard salary level was increased and employers had to shift compensation from bonuses to salary to satisfy the new standard salary level. They asserted that such a change would have a negative impact on the workplace and would undermine managers' sense of ''ownership'' in their organizations. A few employer stakeholders also raised the possibility of counting fringe benefits and/or commissions toward the salary level requirement.

The Department's longstanding position has been to allow employers to pay additional compensation in the form of bonuses in addition to the required salary. § 541.604(a). However, in recognition of the increased role bonuses play in many compensation systems, and as part of the Department's efforts in this rulemaking to modernize these regulations, the Department is now considering whether to also permit nondiscretionary bonuses and incentive payments to count toward a portion of the standard salary level test for the executive, administrative, and professional exemptions.[35] Such payments may include, for example, nondiscretionary incentive bonuses tied to productivity and profitability. Thus, the Department is considering whether compensation such as a nondiscretionary bonus for meeting specified performance metrics, in combination with a minimum weekly salary amount, may be counted in satisfying the standard salary level test.

The Department is also considering how to include nondiscretionary bonuses and incentive payments as part of the salary level test, if such a change is implemented. Compliance with the HCE exemption's $100,000 total compensation requirement is assessed annually, and employers are permitted to make a ''catch-up'' payment at or shortly after the end of the year that counts toward this amount. Employees for whom the HCE exemption is claimed must receive the full standard salary amount, currently $455, weekly on a salary or fee basis. *See* § 541.601(b). The Department believes that a different approach would be needed for the standard salary test. Because the only compensation guaranteed to employees for whom the employer claims the standard EAP exemption is the standard salary threshold amount, the Department believes it is important to strictly limit the amount of the salary requirement that could be satisfied through the payment of nondiscretionary bonuses and incentive pay. The Department is considering whether to permit such payments to satisfy 10 percent of the standard weekly salary level. The Department recognizes that some businesses pay significantly larger bonuses and where larger bonuses are paid, the amount attributable toward the EAP standard salary requirement would be capped at 10 percent of the salary level if such a provision were adopted. The

[34] Specifically, in the 2004 Final Rule the Department increased the standard salary level test by approximately 170 percent for professional employees (from a long test salary level of $170 to a standard test salary level of $455), and by roughly 190 percent for executive and administrative employees (from a long test salary level of $155 to a standard test salary level of $455). The Department averaged these two percentiles and increased the base rate for motion picture industry employees by 180 percent—from $250 to $695. *See* 69 FR 22190.

[35] The Department notes that overtime-eligible (*i.e.,* nonexempt) employees may also receive such bonuses. Where nondiscretionary bonuses or incentive payments are made to overtime-eligible employees, the payments must be included in the regular rate when calculating overtime pay. The Department's regulations at §§ 778.208-.210 explain how to include nondiscretionary bonuses in the regular rate calculation. One way to calculate and pay such bonuses is as a percentage of the employee's total earnings. Under this method, the payment of the bonus includes the simultaneous payment of overtime due on the bonus payment. *See* § 778.210.

Department also believes that the time period over which such compensation should be considered must be limited. Permitting bonuses to be paid as much as a year out would significantly undermine the crucial protection provided by the salary basis requirement, which ensures that exempt workers receive a minimum level of compensation on a consistent basis. Accordingly, the Department envisions that in order for employers to be permitted to credit such compensation toward the weekly salary requirement employees would need to receive the bonus payments monthly or more frequently. For similar reasons, the Department is not considering permitting employers to make a yearly catch-up payment like under the HCE exemption.

With these parameters in mind, the Department seeks comments on whether it should modify the standard exemption for executive, administrative, and professional employees to permit nondiscretionary bonuses and incentive payments to count toward partial satisfaction of the salary level test. The Department seeks information on what industries commonly have pay arrangements that include nondiscretionary bonuses and incentive payments, what types of employees typically earn nondiscretionary bonuses and incentive payments, the types of nondiscretionary compensation employees receive, and to what extent including nondiscretionary bonuses and incentive payments as part of the salary level would advance or hinder that test's ability to serve as a dividing line between exempt and nonexempt employees. The Department also seeks comments on whether payment on a monthly basis is the appropriate interval for such nondiscretionary compensation that will be credited toward the weekly salary requirement, and whether 10 percent is the appropriate limit on the amount of the salary requirement that can be satisfied by nondiscretionary bonuses and incentive payments (with the remaining 90 percent paid on a salary or fee basis in accordance with the regulations).

Consistent with the rule for highly compensated employees (which counts nondiscretionary bonuses toward the total annual compensation requirement), the Department is not considering expanding the salary level test calculation to include discretionary bonuses. The Department is also not considering changing the exclusion of board, lodging, or other facilities from the salary calculation, a position that it has held consistently since the salary requirement was first adopted. Similarly, the Department also declines to consider including in the salary requirement payments for medical, disability, or life insurance, or contributions to retirement plans or other fringe benefits. *See* § 541.601(b)(1). The Department is also concerned it would be inappropriate to count commissions toward the salary level requirement, as employees who earn commissions are usually sales employees who—with the exception of outside sales employees—are generally unable to satisfy the standard duties test (which is more stringent than the HCE duties test) for the EAP exemptions. However, the Department seeks comments on the appropriateness of including commissions as part of nondiscretionary bonuses and other incentive payments that could partially satisfy the standard salary level test.

D. Highly Compensated Employees

In the 2004 Final Rule, the Department created a new highly compensated exemption for EAP employees. Section 541.601(a) provides that such employees are exempt if they earn at least $100,000 in total annual compensation and customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee. Section 541.601(b)(1) states that employees must receive at least $455 per week on a salary or fee basis, while the remainder of the total annual compensation may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation. It also clarifies that total annual compensation does not include board, lodging, and other facilities, and does not include payments for medical insurance, life insurance, retirement plans, or other fringe benefits. Pursuant to § 541.601(b)(2), an employer is permitted to make a final payment (catch-up pay) during the final pay period or within one month after the end of the 52-week period to bring an employee's compensation up to the required level. If an employee does not work for a full year, § 541.601(b)(3) permits an employer to pay a pro rata portion of the required annual compensation, based upon the number of weeks of employment (and one final payment may be made, as under paragraph (b)(2), within one month for employees who leave employment during the year).

In the 2003 NPRM, where the HCE test was first introduced, the Department had proposed to require total annual compensation of at least $65,000. The Department stated that, ''[t]o determine an appropriate salary level for highly compensated employees, the Department looked to points near the higher end of the current range of salaries and found that the top 20 percent of all salaried employees earned above $65,000 annually. This level is consistent with setting the proposed standard test salary level at the bottom 20 percent of salaried employees.'' 68 FR 15571. However, in the 2004 Final Rule, the Department recognized that the required compensation level had to ''be set high enough to avoid the unintended exemption of large numbers of employees—such as secretaries in New York City or Los Angeles—who clearly are outside the scope of the exemptions and are entitled to the FLSA's minimum wage and overtime pay provisions.'' 69 FR 22174. Therefore, the Department increased the required annual compensation to $100,000, to ''address commenters' concerns regarding the associated duties test, the possibility that workers in high-wage regions and industries could inappropriately lose overtime protection, and the effect of future inflation.'' *Id.* at 22175.

The Department set the level at $100,000 because our experience demonstrated that

> virtually every salaried ''white collar'' employee with a total annual compensation of $100,000 per year would satisfy any duties test. Employees earning $100,000 or more per year are at the very top of today's economic ladder, and setting the highly compensated test at this salary level provides the Department with the confidence that, in the words of the Weiss report: ''in the rare instances when these employees do not meet all other requirements of the regulations, a determination that such employees are exempt would not defeat the objectives of section 13(a)(1) of the Act.''

Id. at 22174 (quoting Weiss Report at 22–23). The Department further noted that ''[o]nly roughly 10 percent of likely exempt employees who are subject to the salary tests earn $100,000 or more per year,'' which the Department noted was ''broadly symmetrical with the Kantor approach of setting the minimum salary level for exemption at the lowest 10 percent of likely exempt employees. In contrast, approximately 35 percent of likely exempt employees subject to the salary tests exceed the proposed $65,000 salary threshold.'' *Id.*

The Department continues to believe that an HCE test for exemption is an appropriate means of testing whether highly compensated employees qualify as bona fide executive, administrative, or professional employees. In the 2004 Final Rule, the Department concluded that the requirement for $100,000 in total annual compensation struck the

right balance by matching a much higher compensation level than was required for the standard salary level test with a duties test that was more flexible than the standard duties test, thereby creating a bright-line test that allowed only appropriate workers to qualify for exemption. *See* 69 FR 22174. This total annual compensation requirement was set more than four times higher than the standard salary requirement of $455 per week, which totals $23,660 per year. *Id.* at 22175. Such a balancing of a substantially higher compensation requirement with a minimal duties test still is appropriate, so long as the required annual compensation threshold is sufficiently high to ensure that it covers only employees who ''have almost invariably been found to meet all the other requirements of the regulations for exemption.'' *Id.* at 22174.

Therefore, the Department proposes to increase the total annual compensation required by § 541.601 in order to ensure that it remains a meaningful and appropriate standard when matched with the minimal duties test. Just as with the standard salary level test, it is imperative to increase the compensation level that was established more than ten years ago to ensure that it continues to allow for the exemption of only bona fide exempt employees. Over the past decade, the percentage of salaried employees who earn more than $100,000 annually has increased substantially to approximately 17 percent of full-time salaried workers. Accordingly, the Department proposes to increase the total annual compensation requirement to the annualized weekly earnings of the 90th percentile of all full-time salaried workers ($122,148). As discussed earlier with respect to the standard salary level, the Department is proposing to set the annual compensation requirement as the annualized value of a percentile of weekly earnings of full-time salaried workers rather than a specific dollar amount because we believe it serves as a better proxy for distinguishing those white collar workers who meet the requirements of the HCE exemption. Consistent with the current regulations, the Department also proposes that at least the standard salary requirement must be paid on a salary or fee basis.[36] The Department is not proposing any changes to the HCE duties test created in 2004.

The Department believes that the 90th percentile of full-time salaried workers is appropriate because it brings the required compensation level more in line with the level established in 2004; therefore, it will ensure that, as in 2004, the HCE exemption covers only those employees who are at the very top of today's economic ladder and minimizes ''the possibility that workers in high-wage regions and industries could inappropriately lose overtime protection.'' 69 FR 22175. The proposed $122,148 requirement also generally corresponds to the increase that would result from updating the $100,000 level by the amount of the increase in the CPI–U between 2004 and 2013 (the CPI–U increase would result in a compensation level of approximately $123,000). The Department invites comments on whether the 90th percentile is the correct HCE total annual compensation level and whether the Department should make any other changes to the requirements for the use of the HCE exemption.

E. Automatically Updating the Salary Levels

As previously discussed, the salary level test plays a crucial role in ensuring that the EAP exemptions effectively differentiate between exempt and overtime-protected workers. But even a well-calibrated salary level that is fixed becomes obsolete as wages for nonexempt workers increase over time. Since the EAP regulations were first issued in 1938, the Department has increased the salary level only seven times—in 1940, 1949, 1958, 1963, 1970, 1975, and 2004. The lapses between rulemakings have resulted in salary levels that are based on outdated salary data and thus ill-equipped to help employers assess which employees are unlikely to meet the duties tests for the exemptions. During stakeholder listening sessions several employee advocates called on the Department to index the EAP salary level requirement to ensure that the revised salary test set in this rulemaking does not suffer the same fate as the salary tests in the Department's prior rulemakings.

After careful consideration of the history of EAP salary increases and the impact on the regulated community of routine updating of the salary test, the Department is proposing to modernize the EAP exemptions by establishing a mechanism for automatically updating the standard salary test, as well as the total annual compensation requirement for highly compensated employees. The addition of automatic updating will ensure that the salary test level is based on the best available data (and thus remains a meaningful, bright-line test), produce more predictable and incremental changes in the salary required for the EAP exemptions, and therefore provide certainty to employers, and promote government efficiency by removing the need to continually revisit this issue through resource-intensive notice and comment rulemaking. The Department also proposes to update annually the special salary level test for employees in American Samoa and the base rate test for motion picture industry employees, as described *infra.*

The Department is considering two alternative methodologies for annually updating the salary and compensation thresholds. One method would update the thresholds based on a fixed percentile of earnings for full-time salaried workers. The other method would update the thresholds based on changes in the CPI–U. Both methods are described in detail below and the Department seeks comments on which methodology would be the most appropriate basis for annual updates to the salary and compensation thresholds.

i. History of Automatically Updating the Salary Levels

The Department has only directly commented twice on the subject of automatically updating the salary level test for the EAP exemptions. In the 1970 rulemaking, the Department stated that a comment ''propos[ing] to institute a provision calling for an annual review and adjustment of the salary tests . . . appears to have some merit, particularly since past practice has indicated that approximately 7 years elapse between amendment of the salary level requirements.'' 35 FR 884. Despite recognizing the potential value of this approach, the Department ultimately determined that ''such a proposal will require further study.'' *Id.* In the 2004 Final Rule the Department declined to adopt commenter requests for automatic increases to the salary level, reasoning in part that ''the salary levels should be adjusted when wage survey data and other policy concerns support such a change'' and that ''the Department finds nothing in the legislative or regulatory history that would support indexing or automatic increases.'' 69 FR 22171. Although the Department acknowledged the lack of historical guidance related to the automatic updating of salary levels, in the 2004 Final Rule we did not discuss the Department's authority to promulgate such an approach through notice and comment rulemaking. Rather than explore in greater depth whether

[36] Should the Department implement in the final rule resulting from this proposed rule a provision allowing employers to take a credit against the standard salary level for nondiscretionary bonuses paid to the employee, that credit would not be applicable in determining compliance with the standard salary requirement for HCE workers.

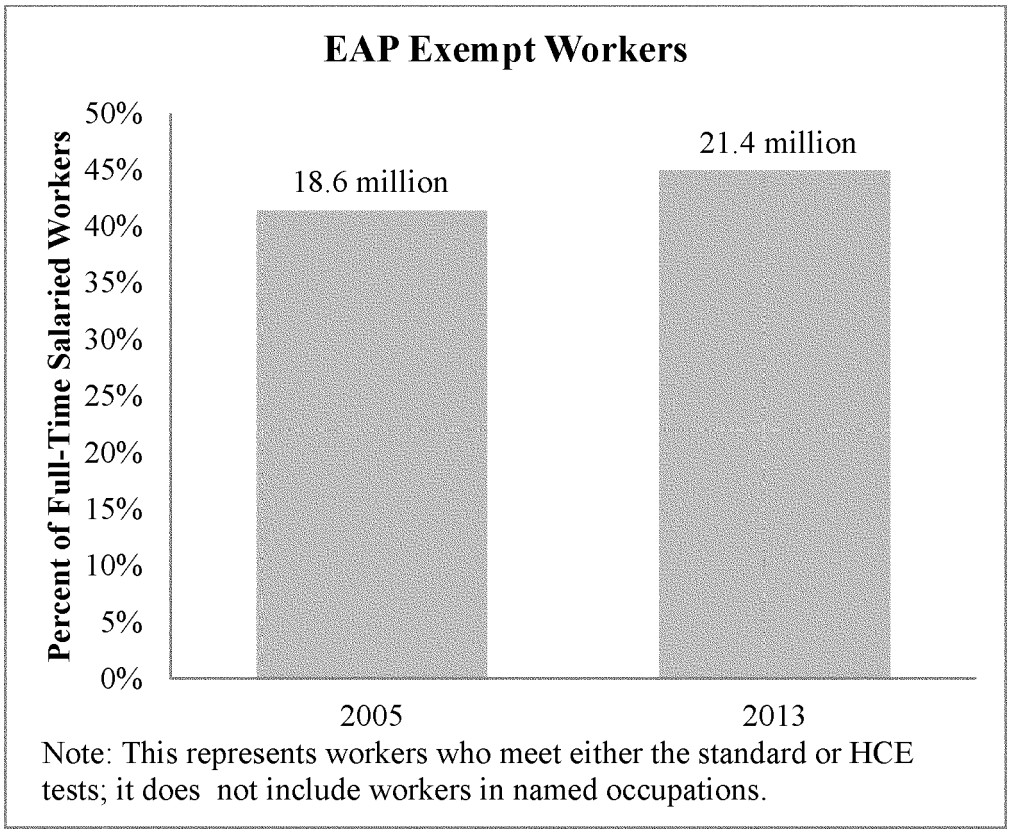
automatic updates to the salary levels posed a viable solution to problems created by lapses between rulemakings, the Department expressed our intent ''in the future to update the salary levels on a more regular basis, as it did prior to 1975.'' *Id.* As discussed below, difficulties in achieving this goal have led the Department to examine the possibility of automatically updating salary levels in greater detail.

The lack of Congressional guidance either supporting or prohibiting automatic updating is unsurprising given the origin and evolution of the salary level test, and does not foreclose the Department's proposal. Congress did not specifically set forth precise criteria, such as a salary level test, for defining the EAP exemptions, but instead delegated that task to the Secretary. The Department established the first salary level tests by regulation in 1938, using our delegated authority to define and delimit the EAP exemptions. *See* 29 U.S.C. 213(a)(1). The fact that the salary level tests were created by regulation after the FLSA was enacted helps explain why the FLSA's early legislative history does not address the salary level tests or methods for updating the salary level. Despite numerous amendments to the FLSA over the past 75 years, Congress has continued to entrust the Department with promulgating, updating, and enforcing the salary test regulations. Significant regulatory changes since 1938 include adding a separate salary level for professional employees in 1940, adopting separate short and long test salary levels in 1949, and creating a single standard salary level test and a new HCE exemption in 2004. These changes were all made without express Congressional guidance, and none have been superseded by statute. Other than directing the Department in 1990 to include in the section 13(a)(1) exemption regulations certain computer employees paid at least six-and-a-half times the minimum wage on an hourly basis, *see* Sec. 2, Pub. L. 101–583, 104 Stat. 2871 (Nov. 15, 1990), Congress has never amended the FLSA in a manner that affects the salary level tests. It has also never enacted limits on the Department's ability to update the salary levels. Just as the Department has authority under 29 U.S.C. 213(a)(1) to establish and update the salary level tests, it likewise has authority to adopt a methodology through notice and comment rulemaking for automatically updating the salary levels to ensure that the tests remain effective. This interpretation is consistent with the well-settled principle that agencies have authority to '' 'fill any gap left, implicitly or explicitly, by Congress.' '' *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 165 (2007) (quoting *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984)).

ii. Rationale for Automatically Updating Salary Levels

The addition of an automatic updating mechanism will ensure that the standard salary level and the HCE total annual compensation requirement remain meaningful tests for distinguishing between bona fide EAP workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is only a strong measure of exempt status if it is up to date. Left unchanged, the test becomes substantially less effective as wages for overtime-protected workers increase over time. *See* Weiss Report at 8 (''The increase in wage rates and salary levels gradually weakened the effectiveness of the present salary tests as a dividing line between exempt and nonexempt employees.''); *see also* 69 FR 22164 (explaining that 1975 salary levels had grown outdated and were ''no longer useful in distinguishing between exempt and nonexempt employees''). For example, in 2005 18.6 million workers subject to the FLSA were potentially covered by the EAP exemptions and in 2013 that number had grown to 21.4 million—an increase of 15 percent—while the number of workers subject to the FLSA grew only 5.8 percent during that period. *See* Figure A. Automatically updating the salary level using the most recent data ensures that the salary level test continues to accurately reflect current salary conditions. This specific proposal also helps fulfill the President's instruction to modernize the part 541 regulations. 79 FR 18737.

Figure A: Employees Subject to EAP Salary Level Requirement



Automatically updating the salary level will ensure that it continues to be a reliable proxy for identifying overtime-eligible white collar employees, thus reducing one source of uncertainty for employers and employees. Regular updates to the salary level will also prevent the more drastic and unpredictable salary level increases that have resulted from the differing time periods between rulemakings. For example, between 1940 and 2004 the time between salary level updates ranged from five to 29 years. In part as a result of these breaks, long test salary level increases between 1940 and 1975 ranged from roughly five to 50 percent, and the 2004 standard salary level test represented an average 180 percent increase from the 1975 long test salary levels. Automatically updating the standard salary level test will ensure that future salary level increases occur at regular intervals and at more even increments.

The Department recognizes that instituting a mechanism for automatically updating the salary level is a change to the part 541 regulations. As explained in the 2004 Final Rule, the Department's reluctance to institute automatic updating was tied in part to our preference for issuing new salary level regulations when new wage survey data necessitated such action. 69 FR 22171. However, a review of salary test history shows that the Department has updated the salary level only once since 1975, and has gone nine or more years between updates on several occasions. This history underscores the difficulty in maintaining an up-to-date and effective salary level test, despite the Department's best intentions. Competing regulatory priorities, overall agency workload, and the time-intensive nature of notice and comment rulemaking have all contributed to the Department's difficulty in updating the salary level test as frequently as necessary to reflect changes in workers' salaries. These impediments are exacerbated because unlike most regulations, which can remain both unchanged and forceful for many years if not decades, in order for the salary level test to be effective, frequent updates are imperative to keep pace with changing employee salary levels. Confronted with this regulatory landscape, the Department believes automatic updating is the most viable and efficient way to ensure that the standard salary level test and the HCE total annual compensation requirement remain current and can serve their intended function of helping differentiate between white collar workers who are overtime-eligible and those who are not.

iii. Proposal for Automatic Updating of the Standard Salary Level Test

The Department proposes to insert a new provision in the regulations in the Final Rule that will establish a set methodology for recalculating the required salary level annually. The Department is not proposing specific regulatory text because it has not chosen the updating methodology and is instead seeking comments on two alternatives—using a fixed percentile of wage earnings or using the CPI–U. In the 1970 rulemaking, the Department recognized the potential merit of automatically updating the salary level test, but determined that such action would ''require further study.'' 35 FR 884. The Department has now examined a range of possible updating methodologies and concluded, for the reasons stated herein, that either maintaining the standard salary level at the 40th percentile of weekly wages of all full-time salaried workers or

updating the standard salary threshold based on changes in the CPI–U would maintain the effectiveness of the salary level in distinguishing overtime-eligible white collar salaried employees from those who may be exempt. Regardless of the updating method used, the Department proposes to publish the revised salary and compensation levels annually using the most recent data as determined and published by BLS. The Department will publish a notice with the new salary level in the **Federal Register**, as well as on the WHD Web site, at least sixty days before the updated rates would become effective. Should the Department choose to make any changes to the updating methodology in the future, such changes would require notice and comment rulemaking.

1. Fixed Percentile Approach to Automatically Updating the Standard Salary Level

The ''fixed percentile'' approach would permit the Department to reset the salary level test by applying the same methodology proposed in this rulemaking to update the standard salary level. As explained at length in section V.A. of this preamble, the proposed salary level test methodology closely tracks prior rulemakings, with a few adjustments drawn from the Department's long history of administering the part 541 regulations. The chosen population—all full-time salaried workers—represents the broadest pool of workers who could potentially be denied overtime pay as bona fide EAP workers. The BLS data for this pool is readily available and transparent (all full-time salaried workers in the CPS data set are included), and at the 40th percentile level is representative of those employees who may be bona fide executive, administrative or professional workers. The Department has proposed raising the salary percentile to the 40th percentile in part to reflect our conclusion that the 20th percentile figure used in the 2004 Final Rule did not fully account for the elimination of the more stringent long duties test; by updating the long—rather than the short—test salary level, and effectively pairing it with the less rigorous short duties test, we inadvertently made the exemptions over-inclusive and increased the risk of misclassification. The proposed salary level percentile reflects the Department's best estimate of the appropriate line of demarcation between exempt and nonexempt workers, and maintaining the salary level at the 40th percentile by updating it annually would ensure that the salary level test continues to fulfill its intended purpose. Further, because annual salary level updates would be based on actual salaries that employers are currently paying, it is consistent with the methodology the Department has used in prior rulemakings when setting the required salary level.

Other factors make the fixed percentile approach well-suited for automatic updating. For example, on a quarterly basis, BLS publishes a table of deciles of the weekly wages of full-time salaried workers, calculated using CPS data,[37] which would provide employers with information on changes in salary levels prior to the annual updates. While employers may be more familiar with the CPI–U, the quarterly publishing of weekly earnings deciles would provide employers with information on changes in wages and allow them to plan for changes in the salary threshold. The Department would be able to update the salary level test annually using this published BLS table, without modifying the data in any way or otherwise engaging in complex data analysis. This transparent process would further the President's instruction to simplify and modernize the part 541 regulations. It would also ensure that salary level updates occur in a manner established in the regulations and, thus, do not require additional, time-consuming notice and comment rulemaking. Additionally, maintaining the standard salary level test at the 40th percentile would ensure that increases in overtime-protected employee salaries do not render the salary level threshold obsolete; such increases have lessened the effectiveness of the salary level test in the past when they were not promptly recognized. For all of these reasons, the Department believes that automatically updating the standard salary level test annually by maintaining the salary level at the 40th percentile of weekly earnings for all full-time salaried workers would ensure the standard salary level remains a meaningful test for distinguishing between overtime-protected and potentially exempt white collar employees.

2. Automatically Updating the Standard Salary Level Using the CPI–U

The Department could also automatically update the salary level test based on changes to the CPI–U—a commonly used economic indicator for measuring inflation. The CPI–U calculates inflation by measuring the average change over time in the prices paid by urban consumers for a set basket of consumer goods and services.[38] The CPI–U is the ''broadest and most comprehensive'' of the many CPI statistics calculated by BLS, and is published monthly.[39]

The Department has generally discussed inflation adjustments in the context of determining how to raise the salary level from a prior rulemaking, not as a method for ensuring the salary level's ongoing effectiveness. The Department has expressed concern in prior part 541 rulemakings with setting a new salary level test by using inflationary indicators to update the prior salary level. These sentiments were first raised in 1949 in the Weiss Report, which considered and rejected proposals to use cost-of-living increases to update the 1940 salary levels. Weiss Report at 12. More recently, in the 2003 NPRM the Department considered whether to calculate the new salary level by adjusting the 1975 salary levels for inflation, and expressed concern that the 1975 figure was a potentially inaccurate benchmark and that an inflation-based adjustment would not account for changes in working conditions over the preceding 28 years. *See* 68 FR 15570. We also noted in the 2003 NPRM that setting the salary level based on inflation was inconsistent with the Department's past practice of looking at actual salaries and incomes, not inflation-adjusted amounts, *id.,* and we expressed concern in the 2004 Final Rule that this approach ''could have an inflationary impact or cause job losses.'' 69 FR 22168.

Although the Department acknowledges these prior concerns regarding whether the CPI–U will accurately track the actual salaries and incomes, we believe that using the CPI–U to update the proposed salary level, which will be set using current data on wages being paid to full-time salaried workers, would ensure that the salary level remains a useful tool for distinguishing between overtime-eligible white collar employees and those who may be exempt. Many of the concerns raised in prior rulemakings are less troublesome here because the Department is only proposing to use the CPI–U to automatically update the proposed salary level going forward; it is not being used to update the salary from its 2004 level. The related concerns about using an outdated salary level as a baseline for inflation-based adjustments, and the inability of inflation-based indicators to account for changes in working conditions, are not cause for concern in the context of

[37] *http://www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm.*

[38] *http://stats.bls.gov/cpi/cpifaq.htm.*

[39] *Id.*

automatically updating a newly set salary level going forward. The proposed salary level provides the most appropriate baseline to subsequently update using the CPI–U, and year-to-year changes in working conditions should be negligible (especially compared to the changes between 1975 and 2004). While the Department considers it unlikely that cumulative changes in job duties, compensation practices, and other relevant working conditions would undermine application of the CPI–U over an extended period of time, should such changes occur the Department could adjust the salary level test through notice and comment rulemaking.

The Department expressed concern in the 2003 NPRM about the effect that adjusting the 1975 salary levels for inflation ''would have on certain segments of industry and geographic areas of the county, particularly in the retail industry and in the South, which tend to pay lower salaries.'' 68 FR 15570. In the 2004 Final Rule the Department explained that these concerns applied ''equally when considering automatic increases to the salary levels'' and declined to adopt commenter requests to institute a mechanism for automatically updating the salary level. 69 FR 22171–72.

The Department continues to believe that any automatic updating mechanism must adequately protect low-wage industries and geographic areas. However, two related factors have led the Department to conclude that updating the salary level using the CPI–U would not harm vulnerable business sectors or have other negative economic effects. First, the Department's proposal to set the salary level test at the 40th percentile of the salaries of all full-time salaried workers already accounts for and protects low-wage industries and geographic areas. In choosing to set the salary level as a percentile of full-time salaried workers, the Department set the salary level at the 40th percentile rather than a higher percentile to account for low-wage regions and industries. Second, the Department has analyzed the historical relationship between the 40th percentile benchmark and the CPI–U, and determined that the data does not substantiate the Department's past concerns about the likely effects on low-wage regions and industries of updating the salary level test using an inflation-based updating mechanism.

As discussed in section VII.E., the CPI–U has largely tracked the earnings rates of the 40th percentile of weekly wages of full-time salaried workers. The two updating methodologies are thus expected to produce roughly equivalent salary growth in the future; or, put another way, past evidence suggests that updating the salary level using the CPI–U would result in a comparable salary level to updating using the fixed percentile approach. Since the 40th percentile figure adequately protects low-wage industries and areas, it follows that CPI–U based updating would do likewise, while also maintaining the appropriate line of demarcation between white collar workers who are overtime-eligible and those who are not. This congruence also supports the conclusion that updating the salary level using the CPI–U, as opposed to actual salary and income data, would not produce an appreciably different result.

Automatically updating the salary level test using the CPI–U would provide a familiar and well understood method for updating the salary level and ensure that the real value of the salary level does not degrade over time. The CPI–U is commonly applied as an automatic updating mechanism. For example, the Internal Revenue Service uses the CPI–U to adjust personal tax brackets, 26 U.S.C. 1(f)(3)–(5), and multiple federal agencies use the CPI–U to determine eligibility for a wide range of government programs.[40] And although it was not intended to serve as a precedent for future rulemakings, in 1975 the Department set salary levels using the consumer price index. 40 FR 7092. Most importantly, given the comparable growth rates of the 40th percentile benchmark and the CPI–U between 1998 and 2013, the Department believes that updating the salary levels using the CPI–U would maintain the effectiveness of the standard salary level test.

The Department seeks comments on both methods to update the standard salary level test—the fixed percentile approach and the CPI–U—including comments on whether one approach is better suited to maintaining the effectiveness of the salary level test. Additionally, the Department seeks comments on whether to schedule updates based on the effective date of the Final Rule, on January 1, or some other specified date. The Department also seeks comments on how often automatic updates to the salary level test should occur. In order to ensure that the salary level tests are based on the best available data, the Department proposes to update the salary level annually, which will produce predictable and incremental changes. However, we seek comments identifying whether a different updating period would be more appropriate.

v. Automatic Updates to the Special Salary Test for American Samoa

As discussed in subpart V.B., the Department has historically set a special salary test for employees in American Samoa because minimum wage rates there are lower than the federal minimum wage. This gap is likely to remain for the foreseeable future since American Samoa's industry-specific minimum wage rates are scheduled to increase only every three years (Sec. 4, Pub. L. 112–149), and as a result the industry with the highest minimum wage will not equal the current federal minimum wage ($7.25 an hour) until September 30, 2027.

Consistent with the 2004 Final Rule, the Department is proposing to set the special salary level for employees in American Samoa at 84 percent of the proposed standard salary level ($774 per week). In future years, the Department proposes to automatically update the special salary level test in American Samoa with the same frequency as the standard salary level and to maintain the 84 percent ratio. The Department will publish the updated American Samoa special salary level and standard salary level simultaneously. Once any industry-specific minimum wage rate in American Samoa equals the federal minimum wage, the special salary level will no longer be operative and the standard salary level test will apply in full to all EAP employees in all industries in American Samoa. The Department seeks comments on this proposal.

vi. Automatic Updates to the Base Rate for Motion Picture Industry Employees

As discussed in subpart V.B., the Department is proposing to increase the base rate for the motion picture industry exception from the salary basis requirement with the same frequency and by the same percentage as the proposed increase to the standard salary level test. This updating method will ensure that the base rate remains a meaningful test for helping determine exempt status for motion picture industry employees who work partial workweeks and are paid a daily rate, rather than a weekly salary. The Department will publish the updated base rate and the standard salary test level simultaneously. The Department seeks comments on this proposal.

[40] *See http://fas.org/sgp/crs/misc/R42000.pdf.*

vii. Proposal for Automatically Updating the Total Annual Compensation Requirement for Highly Compensated Employees

The Department is also proposing to automatically update the total annual compensation requirement for highly compensated employees. This change is needed to ensure that only those who are ''at the very top of [the] economic ladder'' satisfy the total annual compensation requirement and are thus subject to a minimal duties test analysis. 69 FR 22174. Leaving the total annual compensation requirement at a fixed dollar amount would risk exempting increasingly large numbers of employees, thus diluting the effectiveness of the HCE total annual compensation test and allowing exemption of increasing numbers of employees who do not meet the standard duties test. *Id.* Only by automatically updating the requirement so that it does not become obsolete can the Department ensure that the workers who satisfy the HCE compensation test continue to ''almost invariably . . . meet all the other requirements'' for exemption. *Id.*

The Department proposes to update the HCE total annual compensation requirement with the same method and frequency used to update the standard salary level test—either by maintaining the required total annual compensation level at the annualized value of the 90th percentile of the weekly wages of all full-time salaried workers or by updating the total annual compensation requirement based on changes in the CPI–U. As discussed with regard to the standard salary level, either method for updating the required compensation would preserve what the Department has identified as the appropriate dividing line for the use of the minimal duties test. The Department also proposes to update the portion of the total annual compensation that employers are required to pay on a salary basis (proposed to be $921 per week) so that it continues to mirror the standard salary requirement as it is updated. The Department seeks comments on both methods of updating the HCE total annual compensation requirement, including comments on whether one method is better suited to maintaining the effectiveness of the compensation test.

F. Duties Requirements for Exemption

While the Department has long viewed the salary level test as an initial bright-line test for white collar overtime eligibility, we have always recognized the salary level test works in tandem with the duties test. As previously explained, the part 541 regulations set forth three criteria that, in most instances, must be met for an employee to be excluded from the Act's minimum wage and overtime pay protections. Employees must (1) be paid on a salary basis, (2) be paid at least a fixed minimum salary per week, and (3) meet certain requirements as to their job duties.[41] From the outset, examination of the duties performed by the employee was an integral part of the determination of exempt status, and employers must establish that the employee's ''primary duty'' is the performance of exempt work in order for the exemption to apply. Each of the categories included in section 13(a)(1) has separate duties requirements. From 1949 until 2004 the regulations contained two different duties tests for executive, administrative, and professional employees depending on the salary level paid—a long duties test for employees paid a lower salary, and a short duties test for employees paid at a higher salary level. The long duties test included a 20 percent limit on the time spent on nonexempt tasks (40 percent for employees in the retail or service industries). In the 2004 Final Rule, the Department replaced the differing short and long duties tests with a single standard test for executive, administrative, and professional employees that did not include a cap on the amount of nonexempt work that could be performed.

The duties test has always worked in conjunction with the salary requirement to correctly identify exempt EAP employees. The Department has often noted that as salary levels rise a less robust examination of the duties is needed. This inverse correlation between the salary level and the need for an extensive duties analysis was the basis of the historical short and long duties tests. While the salary provides an initial bright-line test for EAP exemption, application of a duties test is imperative to ensure that overtime-eligible employees are not swept into the exemption. While the contours of the duties tests have evolved over time, the Department has steadfastly maintained that meeting a duties test remains a core requirement for the exemptions.[42]

During the stakeholder listening sessions held in advance of this proposed rule, the Department heard from employer stakeholders, particularly in the retail and restaurant industries, who advocated for the need to maintain flexibility in the duties tests. These stakeholders stated that the ability of a store or restaurant manager or assistant manager to ''pitch in'' and help line employees when needed was a key part of their organizations' management culture and necessary to enhancing the customer experience. They emphasized that the employees in these entry-level management positions are critically important to their organizations and that the experience they gain in these positions will lead to higher level management opportunities. Employer stakeholders universally urged the Department not to consider any changes to the current duties tests, explaining that while the duties tests are sometimes difficult to apply and may not be perfect, employers have an understanding of the meaning and application of the current duties tests and any changes might engender costly litigation as parties try to adapt to and interpret the new rules.

Employee stakeholders, on the other hand, stated that the current duties tests, particularly the 50 percent primary duty rule of thumb (§ 541.700(c)) and the concurrent duties doctrine for executives (§ 541.106), are insufficiently protective of employees. In particular, they expressed concern with cases in which the exemption has been applied to employees who have spent large amounts of time (sometimes more than 90 percent) performing nonexempt work. They asserted that some businesses, particularly in the retail industry, have built into their business model having exempt store managers perform significant amounts of nonexempt work in order to keep labor costs down. These employee stakeholders argued that where employees are essentially required to perform significant amounts of nonexempt work, the employees do not, in fact, have a primary duty of management in any meaningful sense.

[41] The exemptions for outside sales employees, doctors, lawyers, teachers, and computer employees are distinct from the other exemptions with respect to their salary requirements.

[42] Over the years since the original EAP regulations were first implemented, commenters have repeatedly suggested that salary should be the sole basis for the exemption. For example, at a 1949 hearing, ''some of the management witnesses were sufficiently convinced of the desirability of salary tests to propose the adoption of a salary level as the sole basis of exemption.'' Weiss Report at 9. The Department declined to use salary as the sole basis for exemption, stating that the ''Administrator would undoubtedly be exceeding his authority if he included within the definition of these terms craftsmen, such as mechanics, carpenters, or linotype operators, no matter how highly paid they might be.'' Weiss Report at 23. As recently as the 2004 Final Rule, the Department has maintained the view ''that the Secretary does not have authority under the FLSA to adopt a 'salary only' test for exemption'' and rejected suggestions from employer groups to do so. 69 FR 22173.

In response to this concern, a few employer stakeholders argued that the concurrent duties regulation already addresses this issue by distinguishing between exempt executive employees who choose when to perform nonexempt duties and nonexempt employees who must perform duties as they are assigned. § 541.106(a).

The Department appreciates the views shared by employer and employee stakeholders on this important issue. The Department understands the importance of managers ''pitching in'' and leading by example. At the same time, the Department is concerned that employees in lower-level management positions may be classified as exempt and thus ineligible for overtime pay even though they are spending a significant amount of their work time performing nonexempt work. The Department believes that, at some point, a disproportionate amount of time spent on nonexempt duties may call into question whether an employee is, in fact, a bona fide EAP employee. The Department is concerned that the removal of the more protective long duties test in 2004 has exacerbated these concerns and led to the inappropriate classification as EAP exempt of employees who pass the standard duties test but would have failed the long duties test. The issue sometimes arises when a manager is performing exempt duties less than 50 percent of the time, but it is argued that those duties are sufficiently important to nonetheless be considered the employee's primary duty. The issue also arises when a manager who is performing nonexempt duties much of the time is deemed to perform exempt duties concurrently with those nonexempt duties, and it is argued the employee is exempt on that basis. While the regulations provide that exempt executives can perform exempt duties concurrently with nonexempt duties, § 541.106, this rule can be difficult to apply and can lead to varying results. *Compare In re Family Dollar FLSA Litigation,* 637 F.3d 508 (4th Cir. 2011) (manager of retail chain store considered an executive exempt from overtime pay requirements under the FLSA whether collecting cash, sweeping the floor, stocking shelves, working with employee schedules, or running a cash register); with *Morgan* v. *Family Dollar Stores, Inc.,* 551 F.3d 1233 (11th Cir. 2008) (store managers not exempt executives where they spent most of their time performing manual, not managerial, tasks). California has addressed this issue by requiring that exempt EAP employees spend at least 50 percent of their time performing their primary duty, and not counting time during which nonexempt work is performed concurrently. Cal. Lab. Code Sec. 515(a), (e); *see Heyen* v. *Safeway Inc.,* 157 Cal. Rptr. 3d 280, 302 (Cal. Ct. App. 2013).

Taking into account the views of stakeholders, the Department is seeking to determine whether, in light of our salary level proposal, changes to the duties tests are also warranted. The duties test must adequately protect overtime-eligible white collar employees who exceed the salary threshold from misclassification as exempt EAP employees.

The Department is proposing to set the salary threshold at the 40th percentile of weekly earnings of full-time salaried employees. As previously discussed, because the standard duties test is based on the short duties test—which was intended to work with a higher salary level—and the proposed salary level is below the historic average for the short test salary, a salary level significantly below the 40th percentile would necessitate a more robust duties test to ensure proper application of the exemption. The Department believes that the salary level increase proposed in this NPRM, coupled with automatic updates to maintain the effectiveness of the salary level test, will address most of the concerns relating to the application of the EAP exemption. A regularly updated salary level will assist in screening out employees who spend significant amounts of time on nonexempt duties and for whom exempt work is not their primary duty. However, the Department invites comments on whether adjustments to the duties tests are necessary, particularly in light of the proposed change in the salary level test. The Department recognizes that duties remain a critical metric of exempt status and invites comment on the effectiveness of the duties tests found in the current regulations.

While the Department is not proposing specific regulatory changes at this time, the Department is seeking additional information on the duties tests for consideration in the Final Rule. Specifically, the Department seeks comments on the following issues:

A. What, if any, changes should be made to the duties tests?

B. Should employees be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for exemption? If so, what should that minimum amount be?

C. Should the Department look to the State of California's law (requiring that 50 percent of an employee's time be spent exclusively on work that is the employee's primary duty) as a model? Is some other threshold that is less than 50 percent of an employee's time worked a better indicator of the realities of the workplace today?

D. Does the single standard duties test for each exemption category appropriately distinguish between exempt and nonexempt employees? Should the Department reconsider our decision to eliminate the long/short duties tests structure?

E. Is the concurrent duties regulation for executive employees (allowing the performance of both exempt and nonexempt duties concurrently) working appropriately or does it need to be modified to avoid sweeping nonexempt employees into the exemption? Alternatively, should there be a limitation on the amount of nonexempt work? To what extent are exempt lower-level executive employees performing nonexempt work?

In addition to seeking comments on the duties tests, the Department is also considering whether to add to the regulations examples of additional occupations to provide guidance in administering the EAP exemptions. Employer stakeholders have indicated that examples of how the exemptions may apply to specific jobs, such as those provided in current §§ 541.203, 541.301(e), and 541.402, are useful in determining exempt status and should be expanded. The Department agrees that examples of how the general executive, administrative, and professional exemption criteria may apply to specific occupations are useful to the regulated community and seeks comments on what specific additional examples of nonexempt and exempt occupations would be most helpful to include.

Computer Related Occupations

In further effort to provide effective guidance to the public on the administration of the EAP exemptions, the Department is considering the suggestions of employer stakeholders from the computer and information technology sectors to include additional examples of the application of the EAP exemptions to occupational categories in computer-related fields. The Department has, as a threshold matter, reviewed the authority by which it might include additional examples of computer-related occupations. For the reasons articulated in the preamble to the 2004 Final Rule, the Department continues to believe that we should not expand the EAP exemption beyond the computer exemption currently set forth in section 13(a)(17), given the clarity

with which Congress has set forth the scope of that exemption.[43] 69 FR 22160.

However, in the 2004 Final Rule, the Department did add additional examples of occupations within the computer industry such as systems analysts and computer programmers which, subject to a case-by-case duties analysis, might fall within the section 13(a)(1) administrative and executive exemptions. § 541.402. In response to stakeholder input and as part of our broader effort to simplify part 541, the Department is again exploring the possibility of listing additional illustrative examples that typically do or do not fall within the general criteria for the three basic EAP exemptions (*see* §§ 541.100, .200, .300), as opposed to those falling within the computer-specific exemption set forth in section 13(a)(17), to bring additional clarity to employers and employees within the computer and information technology industries.

The Department continues to be cognizant of the ''tremendously rapid pace of significant changes occurring in the information technology industry'' (69 FR 22158), and therefore requests comments from employer and employee stakeholders in the computer and information technology sectors as to what additional occupational titles or categories should be included as examples in the part 541 regulations, along with what duties are typical of such categories and would thus cause them to generally meet or fail to meet the relevant EAP exemption criteria. To provide additional context, the Department, as an initial matter, expresses the view that a help desk operator whose responses to routine computer inquiries (such as requests to reset a user's password or address a system lock-out) are largely scripted or dictated by a manual that sets forth well-established techniques or procedures would not possess the discretion and independent judgment necessary for the administrative exemption, nor would that individual likely qualify for any other EAP exemption. On the other hand, an information technology specialist who, without supervision, routinely troubleshoots and repairs significant glitches in his company's point of sale software for the company's retail clients might be an example of an administrative employee pursuant to § 541.200 as this employee's work appears to be directly related to the management or business operation of his employer or employer's customers and requires the use of discretion and independent judgment with respect to matters of significance.

[43] Although the 1990 amendments to the FLSA afforded the Department some discretion to elaborate on computer-specific exemption criteria distinct from the standard EAP exemption criteria (Sec. 2, Pub. L. 101–583, 104 Stat 2871 (Nov. 15, 1990)), the Department concluded in the 2004 Final Rule that, because Congress subsequently codified the criteria for a computer employee exemption in FLSA section 13(a)(17) (Sec. 2105(a), Pub. L. 104–188, 110 Stat. 1755 (Aug. 20, 1996)), it would be ''inappropriate'' to engage in further rulemaking after Congress had spoken on the issue. 69 FR 22160.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. Persons are not required to respond to the information collection requirements until they are approved by the Office of Management and Budget (OMB) under the PRA. This NPRM would revise the existing information collection requirements previously approved under OMB control number 1235–0018 (Records to be Kept by Employers—Fair Labor Standards Act) and OMB control number 1235–0021 (Employment Information Form) in that employers would need to maintain records of hours worked for more employees and more employees may file complaints to recover back wages under the overtime pay provision. As required by the PRA, the Department has submitted the information collection revisions to OMB for review in order to reflect changes that would result from this proposed rule were it to be adopted.

Summary: FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions of employment. A FLSA-covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. The Department has promulgated regulations at 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. No new information collection requirements would be imposed by the adoption of this NPRM; rather, burdens under existing requirements are expected to increase as more employees receive minimum wage and overtime protections due to the proposed increase in the salary level requirement. More specifically, the proposed changes in this NPRM may cause an increase in burden on the regulated community because employers will have additional employees to whom certain long-established recordkeeping requirements apply (*e.g.,* maintaining daily records of hours worked by employees who are not exempt from the both minimum wage and overtime provisions). Additionally, the proposed changes in this NPRM may cause an initial increase in burden if more employees file a complaint with WHD to collect back wages under the overtime pay requirements. We anticipate this increased burden will wane over time as employers adjust to the new rule.

Purpose and Use: WHD and employees use employer records to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document compliance with the FLSA, including showing qualification for various FLSA exemptions. Additionally, WHD uses the Employment Information form to document allegations of non-compliance with labor standards the agency administers.

Technology: The regulations prescribe no particular order or form of records and employers may preserve records in forms of their choosing provided that facilities are available for inspection and transcription of the records.

Minimizing Small Entity Burden: Although the FLSA recordkeeping requirements do involve small businesses, including small state and local government agencies, the Department minimizes respondent burden by requiring no specific order or form of records in responding to this information collection. Burden is reduced on complainants by providing a template to guide answers.

Public Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department seeks public comments regarding the

burdens imposed by the information collections associated with this NPRM. Commenters may send their views about this information collection to the Department in the same manner as all other comments (*e.g.,* through the regulations.gov Web site). All comments received will be made a matter of public record and posted without change to *http://www.regulations.gov*, including any personal information provided.

As previously noted, an agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department has submitted information collection requests under OMB control numbers 1235–0018 and 1235–0021 in order to update them to reflect this rulemaking and provide interested parties a specific opportunity to comment under the PRA. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. Interested parties may receive a copy of the full supporting statements by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications may be addressed to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, Washington, DC 20503; Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll free numbers). OMB will consider all written comments that the agency receives within 30 days of publication of this proposed rule. Commenters are encouraged, but not required, to send the Department a courtesy copy of any comments sent to OMB. The courtesy copy may be sent via the same channels as comments on the rule.

OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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).

Total annual burden estimates, which reflect both the existing and new responses for the recordkeeping and complaint process information collections at the proposed salary, are summarized as follows:

Type of Review: Revisions to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Records to be Kept by Employers—Fair Labor Standards Act.

OMB Control Number: 1235–0018.

Affected Public: Private sector businesses or other for-profits, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.

Estimated Number of Respondents: 3,771,434 (unaffected by this rulemaking).

Estimated Number of Responses: 50,467,523 (6,909,600 added by this rulemaking).

Estimated Burden Hours: 1,235,161 hours (230,320 added by this rulemaking).

Estimated Time per Response: Various (unaffected by this rulemaking).

Frequency: Various (unaffected by this rulemaking).

Other Burden Cost: 0.

Title: Employment Information Form.

OMB Control Number: 1235–0021.

Affected Public: Businesses or other for-profit, farms, not-for-profit institutions, state, local and tribal governments, and individuals or households.

Total Respondents: 38,138 (2,788 added by this rulemaking).

Estimated Number of Responses: 38,138 (2,788 added by this rulemaking).

Estimated Burden Hours: 12,713 (930 hours added by this rulemaking).

Estimated Time per Response: 20 minutes (unaffected by this rulemaking).

Frequency: once.

Other Burden Cost: 0.

VII. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866, the Department must determine whether a regulatory action is economically ''significant,'' defined as having an annual effect on the economy of $100 million or more, and therefore subject to review by OMB and the requirements of the Executive Order. This proposed rule is economically significant within the meaning of Executive Order 12866; therefore, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule.

A. Introduction

i. Background

The FLSA applies to all enterprises that have employees engaged in commerce or in the production of goods for commerce and have an annual gross volume of sales made or business done of at least $500,000 (exclusive of excise taxes at the retail level that are separately stated); or are engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or individuals with intellectual disabilities who reside on the premises; a school for intellectually or physically disabled or gifted children; a preschool, elementary or secondary school, or an institution of higher education (without regard to whether such hospital, institution or school is public or private, or operated for profit or not); or are engaged in an activity of a public agency. *See* 29 U.S.C. 203(s).

There are two ways an employee may be covered by the provisions of the FLSA: (1) Enterprise coverage, in which any employee of an enterprise covered by the FLSA is covered, and (2) individual coverage, in which even employees of non-covered enterprises may be covered if they are engaged in interstate commerce or in the production of goods for commerce, or are employed in domestic service. The FLSA requires employers to: (1) Pay employees who are covered and not exempt from the Act's requirements not less than the Federal minimum wage for all hours worked and overtime premium pay at a rate of not less than one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek, and (2) make, keep, and preserve records of the persons

employed by the employer and of the wages, hours, and other conditions and practices of employment. It is widely recognized that the general requirement that employers pay a premium rate of pay for all hours worked over 40 in a workweek is a cornerstone of the Act, grounded in two policy objectives. The first is to spread employment by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours, thereby reducing involuntary unemployment. The second policy objective is to reduce overwork and its detrimental effect on the health and well-being of workers.

The FLSA provides a number of exemptions from the Act's minimum wage and overtime pay provisions, including one for bona fide executive, administrative, and professional employees. Such employees typically receive more monetary and non-monetary benefits than most blue collar and lower-level office workers and therefore are less likely to need the Act's protection. Thus, Congress created the exemption from the FLSA's minimum wage and overtime pay protections for employees employed in a bona fide executive, administrative, or professional capacity and for outside sales employees, as those terms are ''defined and delimited'' by the Department. 29 U.S.C. 213(a)(1). The Department's regulations implementing those exemptions are codified at 29 CFR part 541.

For an employer to exclude an employee from minimum wage and overtime protection pursuant to the EAP exemptions, the employee generally must meet three criteria: (1) The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) the amount of salary paid must meet a minimum specified amount (the ''salary level test''); and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the ''duties test''). The regulations governing these tests have been updated periodically since the FLSA's enactment in 1938, most recently in 2004 when, among other revisions, the Department increased the salary level test to $455 per week.

As a result of inflation and the low value of the salary threshold, the annual value of this salary level test, $23,660 ($455 per week for 52 weeks), is now slightly below the 2014 poverty threshold for a family of four ($24,008),[44] making it inconsistent with Congress' intent to exempt only bona fide EAP workers, who typically earn salaries well above those of any workers they may supervise and presumably enjoy other privileges of employment such as above average fringe benefits, greater job security, and better opportunities for advancement. Stein Report at 21–22.

In the 2004 Final Rule, the Department also changed the structure of the duties test. Between 1949 and 2004, the EAP exemptions included two versions of the duties test. Assuming that a worker was paid on a salary basis, the exemptions would be met if a worker passed either a ''long'' test, which involved a more rigorous set of duties criteria, paired with a lower salary level, or a ''short'' test, which imposed fewer duties requirements, paired with a higher salary level. In the 1975 update, the last before the 2004 Final Rule, the Department set the long test salary levels at $155 per week for executive and administrative employees and $170 per week for professional employees. The short test salary level was set at $250 per week for all three EAP categories. In 2004, the Department replaced the two-test structure with a single ''standard'' duties test for each category, which closely resembles the former short test duties requirements, and a single salary level test of $455 per week based on an update of the 1975 long test salary level. The Department also introduced a highly compensated employee (HCE) exemption in the 2004 Final Rule, under which an employee may be exempt if he or she passes a very minimal duties test, receives at least $455 per week paid on a salary basis, and is highly compensated, defined in the 2004 Final Rule as earning total annual compensation, which may include commissions and nondiscretionary bonuses in addition to a salary, of at least $100,000. The HCE duties test is much more abbreviated than the historical short test duties requirements.

The premise behind the salary level tests is that employers are more likely to pay higher salaries to workers in bona fide EAP jobs than to workers performing nonexempt duties. A high salary is considered a measure of an employer's good faith in classifying an employee as exempt, because an employer is less likely to have misclassified a worker as exempt if he or she is paid a high wage. Stein Report at 5; Weiss Report at 8.

The salary level requirement was created to identify the dividing line distinguishing workers performing truly exempt duties from the nonexempt workers Congress intended to be protected by the FLSA's minimum wage and overtime provisions. Throughout the regulatory history of the FLSA, the Department has considered the salary level test the ''best single test'' of exempt status. Stein Report at 19. This bright-line test is easily observed, objective, and clear. *Id.*

ii. Need for Rulemaking

The salary level test has been updated seven times since it was implemented in 1938. Table 1 presents the weekly salary levels associated with the EAP exemptions since 1938, organized by exemption and long/short/standard duties test.

TABLE 1—HISTORICAL SALARY LEVELS FOR THE EAP EXEMPTIONS

Date enacted	Long test			Short test (all)
	Executive	Administrative	Professional	
1938	$30	$30	.....	.....
1940	30	$50	$50	.....
1949	55	75	75	$100
1958	80	95	95	125
1963	100	100	115	150

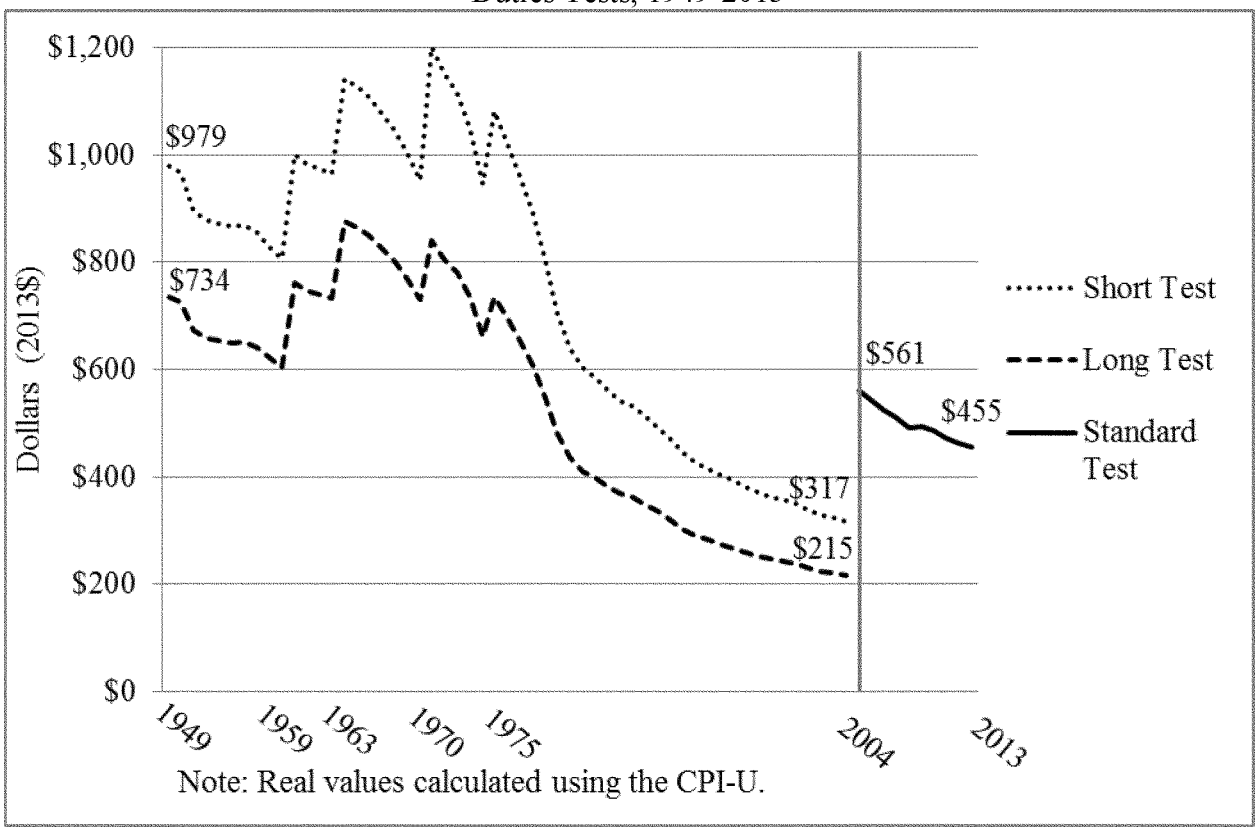
[44] The 2014 poverty threshold for a family of four with two related people under 18 in the household. Available at: *http://www.census.gov/hhes/www/poverty/data/threshld/index.html.*

TABLE 1—HISTORICAL SALARY LEVELS FOR THE EAP EXEMPTIONS—Continued

Date enacted	Long test			Short test (all)
	Executive	Administrative	Professional	
1970	125	125	140	200
1975	155	155	170	250
Standard Test				
2004	$455			

The standard salary level was set at $455 per week in 2004. Following more than ten years of inflation, the purchasing power, or real value, of the standard salary level test has eroded substantially, and as a result increasingly more workers earn above the salary threshold. By 2013 the real value of the standard salary level had declined 18.9 percent since 2004, calculated using the Consumer Price Index for all urban consumers (CPI–U).[45] Figure 1 demonstrates how the real values of the salary levels have changed since 1949, measured in 2013 dollars.

Figure 1: Real Values of the Salary Level Tests using the Long, Short, and Standard Duties Tests, 1949-2013



As a result of the erosion of the real value of the standard salary level, more and more workers lack the clear protection the salary level test is meant to provide. Each year that the salary level is not updated, its utility as a distinguishing mechanism between exempt and nonexempt workers declines. The Department has revised the levels just once in the 40 years since 1975. In contrast, in the 37 years between 1938 and 1975, salary test levels were increased approximately every five to nine years. In our 2004 rulemaking, the Department stated the intention to ''update the salary levels on a more regular basis, as it did prior to 1975,'' and added that ''the salary levels should be adjusted when wage survey data and other policy concerns support such a change.'' 69 FR 22171.

The real value of the salary level test has fallen substantially both when measured against its 2004 level and the 1975 levels. If the standard EAP salary level established in 2004 had kept up with inflation (measured using the CPI–U), it would be $561 per week in 2013 dollars, a 23.3 percent increase relative

[45] CPI–U data available at: *http://data.bls.gov/cgi-bin/cpicalc.pl.*

to its current level. If the EAP salary level for the short test established in 1975 had kept up with inflation, it would be $1,083 per week, a 137.9 percent increase relative to the current salary level.

In order to restore the value of the standard salary level as a line of demarcation between those workers for whom Congress intended to provide minimum wage and overtime protections and those workers who may be performing bona fide EAP duties, and to maintain its continued validity, the Department proposes to set the standard salary level equal to the 40th percentile of weekly earnings for all full-time salaried workers. Based on 2013 salary data,[46] this is equivalent to a standard salary level of $921 per week. The Department also proposes to automatically update the standard salary level annually in the future. Furthermore, the Department proposes to set the HCE compensation level at the 90th percentile of annualized weekly earnings for full-time salaried workers, equivalent to $122,148, and to update the level annually in the future. Automatic updating would preserve the value of these earnings thresholds, eliminate the volatility associated with previous changes in the thresholds, and provide certainty for employers with respect to future changes. It would also simplify the updating process, as the Department would simply publish a notice in the **Federal Register** of the updated salary and compensation thresholds on an annual basis, and additional notice and comment rulemaking to adjust the salary and annual compensation thresholds would not be necessary unless the Department determined in the future that the methodology for setting the standard salary or the HCE total compensation levels needed to be adjusted.

iii. Summary of Affected Workers, Costs, Benefits, and Transfers

The Department estimated the number of affected workers and quantified costs and transfer payments associated with this proposed rulemaking.[47] All estimates are based on analysis of the Current Population Survey (CPS), a monthly survey of 60,000 households conducted by the U.S. Census Bureau. In 2013, there were an estimated 144.2 million wage and salary workers in the United States, of whom 128.5 million were subject to the FLSA and the Department's regulations.[48] [49] Of these 128.5 million workers, the Department estimates that 43.0 million are white collar salaried employees who may be affected by a change to the Department's part 541 regulations and are not covered by another (non-EAP) exemption.[50] [51] The remaining 85.5 million workers include blue collar workers, workers paid on an hourly basis, and workers eligible for another (non-EAP) overtime exemption. These workers were excluded because they will generally not be affected by this proposed rulemaking. Of the 43.0 million workers discussed above, the Department estimates that 28.5 million are exempt from the minimum wage and overtime pay provisions under the part 541 EAP exemptions, while 14.4 million do not satisfy the duties tests for EAP exemption and/or earn less than $455 per week.[52] However, of the 28.5 million EAP exempt workers, 7.1 million were in ''named occupations'' and thus need only pass the duties tests to be subject to the standard EAP exemptions.[53] Therefore, these workers were not considered in the analysis, leaving 21.4 million EAP exempt workers potentially affected by this proposed rule.

The Department proposes to increase the standard salary level from $455 per week to the 40th percentile of weekly earnings for all full-time salaried workers, which translates to $921 per week, an increase of $466 over the current level (Table 2).[54] The Department also proposes to increase the HCE annual compensation level to the 90th percentile of annualized weekly earnings for full-time salaried workers, which translates to $122,148 annually.

TABLE 2—PROPOSED SALARY LEVELS

Salary level	Current salary level	Proposed salary level	Total increase	
			$	%
Standard exemption	$455/week	$921/week	466	102.4
HCE exemption	100,000/year	122,148/year	22,148	22.1

The Department also proposes to annually update the standard salary level to ensure the ongoing effectiveness of the salary level as a means of delimiting workers who should not fall within the EAP exemption. Similarly, the Department proposes to annually update the HCE total annual compensation level to ensure the effectiveness of the annual compensation requirement as a test for which employees should be subject to the minimal duties test for the HCE exemption.

In Year 1, an estimated 4.6 million workers would be affected by the increase in the standard salary level test (Table 3). This figure consists of currently EAP-exempt workers who earn at least $455 per week but less than the 40th percentile ($921) of all full-

[46] Unless otherwise noted, the Department relied upon 2013 data in the development of the NPRM. The Department will update the data used in the Final Rule resulting from this proposal.

[47] Because the Department has not proposed specific changes to the duties tests, potential changes to the duties tests are not included in this RIA. However, the Department discusses a potential methodology for determining the impact of any changes to the duties test in section VII.F.

[48] Data on wage and salary workers are from the CPS, series ID: LNU02000000.

[49] Workers not covered as employees by the FLSA and/or the Department's regulations include: members of the military, unpaid volunteers, the self-employed, many religious workers, and most federal employees. The number of workers covered by the FLSA was estimated using the CPS Merged Outgoing Rotation Group (MORG) data.

[50] As discussed in more detail later, the Department used pooled data from 2011–2013 to represent the 2013 population in order to increase sample size, and thus the granularity of results.

[51] As discussed later, the Department excluded from this analysis certain workers for whom their employer could claim a non-EAP exemption from the FLSA's minimum wage and overtime pay provisions, and certain workers for whom the employer could claim an overtime pay exemption. For simplicity, the Department refers to these exemptions as other (non-EAP) exemptions.

[52] Here and elsewhere in this analysis, numbers are reported at varying levels of aggregation, and are generally rounded to a single decimal point. However, calculations are performed using exact numbers. Therefore, as in this case, some numbers may not match the reported total or the calculation shown due to rounding of components.

[53] Workers not subject to the EAP salary level test include teachers, academic administrative personnel, physicians, lawyers, judges, and outside sales workers.

[54] The BLS data set used for this rulemaking consists of earnings for all full-time (defined as at least 35 hours per week) non-hourly paid employees. For the purpose of this rulemaking, the Department considers data representing compensation paid to non-hourly workers to be an appropriate proxy for compensation paid to salaried workers.

time salaried workers. Additionally, an estimated 36,000 workers would be affected by the increase in the HCE compensation test. In Year 10, with automatic updating, between 5.1 and 5.6 million workers are projected to be affected by the change in the standard salary level test and between 33,000 and 42,000 workers affected by the change in the HCE total annual compensation test, depending on the updating methodology used.

TABLE 3—ESTIMATED NUMBER OF AFFECTED EAP WORKERS, TEN-YEAR PROJECTIONS WITH AND WITHOUT AUTOMATIC UPDATING

Affected EAP workers (1,000s) [a]	Without automatic updating		Updated with fixed percentiles		Updated with CPI–U	
	Year 1	Year 10	Year 1	Year 10	Year 1	Year 10
Standard exemption	4,646	2,685	4,646	5,568	4,646	5,062
HCE exemption	36	7	36	42	36	33

[a] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the proposed salary levels (if their weekly earnings do not increase to the proposed salary levels).

Three direct costs to employers are quantified in this analysis: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Regulatory familiarization costs are the costs incurred to read and become familiar with the requirements of the rule. Adjustment costs are the costs accrued to determine workers' new exemption statuses, notify employees of policy changes, and update payroll systems. Managerial costs associated with this proposed rulemaking occur because hours of workers who are newly entitled to overtime may be more closely scheduled and monitored to minimize or avoid paying the overtime premium.

The costs presented here are the combined costs for both the change in the standard salary level test and the HCE annual compensation level (these will be disaggregated in section VII.D.iv.). With updating, total average annualized direct employer costs were estimated to be between $239.6 and $255.3 million, assuming a 7 percent discount rate; hereafter, unless otherwise specified, average annualized values will be presented using the 7 percent real discount rate (Table 4). Deadweight loss (DWL) is also a cost but not a direct employer cost. DWL is a function of the difference between the wage employers are willing to pay for the hours lost, and the wage workers are willing to take for those hours. In other words, DWL represents the decrease in total economic surplus in the market arising from the change in the regulation. Average annualized DWL was estimated to be between $9.5 and $10.5 million, depending on updating methodology.

In addition to the direct costs, this proposed rulemaking will also transfer income from employers to employees in the form of wages. Average annualized transfers were estimated to be between $1,178.0 and $1,271.4 million, depending on updating methodology. The majority of these transfers are from employers to affected EAP workers who become overtime protected due to changes in the EAP regulations.

Employers may incur additional costs, such as hiring new workers. These other costs are discussed in section VII.D.iv.5. Another potential impact of the rule's proposed increase in the salary threshold is a reduction in litigation costs. Other unquantified transfers, costs, and benefits are discussed in section VII.D.vii.

TABLE 4—SUMMARY OF REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS WITH AUTOMATIC UPDATING

[Millions 2013$]

Cost/transfer [a]	Automatic updating method [b]	Year 1	Future years [c]		Average annualized value	
			Year 2	Year 10	3% real rate	7% real rate
Direct employer costs	Percentile	$592.7	$188.8	$225.3	$248.8	$255.3
	CPI–U	592.7	181.1	198.6	232.3	239.6
Transfers [d]	Percentile	1,482.5	1,160.2	1,339.6	1,271.9	1,271.4
	CPI–U	1,482.5	1,126.4	1,191.4	1,173.7	1,178.0
DWL	Percentile	7.4	10.8	11.2	10.5	10.5
	CPI–U	7.4	10.3	9.7	9.6	9.5

[a] Costs and transfers for affected workers passing the standard and HCE tests are combined.
[b] The percentile method sets the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers and the HCE compensation level at the 90th percentile. The CPI–U method adjusts both levels based on the annual percent change in the CPI–U.
[c] These costs/transfers represent a range over the nine-year span.
[d] This is the net transfer from employers to workers. There may also be transfers of hours and income from some workers to other workers.

iv. Terminology and Abbreviations

The following terminology and abbreviations will be used throughout this Regulatory Impact Analysis (RIA).

Affected EAP workers: The population of potentially affected EAP workers who either earn between $455 and the proposed salary level of the 40th percentile of weekly earnings ($921) or qualify for the HCE exemption and earn between $100,000 and the 90th percentile of earnings ($122,148 annually). This is estimated to be 4.7 million workers.[55]

[55] Setting the standard salary level at the 40th percentile is estimated to affect 4,646,000 workers. *See* Table 3. Additionally, 36,000 workers are potentially affected by the change in the HCE exemption's total compensation level. *Id.*

Continued

BLS: Bureau of Labor Statistics.

CPI–U: Consumer Price Index for all urban consumers.

CPS: Current Population Survey.

Duties test: To be exempt from the FLSA's minimum wage and overtime requirements under section 13(a)(1), the employee's primary job duty must involve bona fide executive, administrative, or professional duties as defined by the regulations. The Department distinguishes among four such tests:

Standard duties test: The duties test used in conjunction with the standard salary level test, as set in 2004 and applied to date, to determine eligibility for the EAP exemptions. It replaced the short and long tests in effect from 1949 to 2004, but its criteria closely follow those of the former short test.

HCE duties test: The duties test used in conjunction with the HCE compensation level test, as set in 2004 and applied to date, to determine eligibility for the HCE exemption. It is much less stringent than the standard and short duties tests to reflect that very highly paid employees are much more likely to be properly classified as exempt.

Long duties test: One of two duties tests used from 1949 until 2004; this more restrictive duties test had a greater number of requirements, including a limit on the amount of nonexempt work that could be performed, and was used in conjunction with a lower salary level test to determine eligibility for the EAP exemptions (*see* Table 1).

Short duties test: One of two duties tests used from 1949 to 2004; this less restrictive duties test had fewer requirements and was used in conjunction with a higher salary level test to determine eligibility for the EAP exemptions (*see* Table 1).

DWL: Deadweight loss; the loss of economic efficiency that can occur when equilibrium in a market for a good or service is not achieved.

EAP: Executive, administrative, and professional.

HCE: Highly compensated employee; a category of EAP-exempt employee, established in 2004 and characterized by high earnings and a minimal duties test.

MORG: Merged Outgoing Rotation Group supplement to the CPS.

Named occupations: Workers in named occupations are not subject to the salary level or salary basis tests. These occupations include teachers, academic administrative personnel,[56] physicians,[57] lawyers, and judges.[58]

Overtime Workers

Occasional overtime workers: Workers who report they usually work 40 hours or less per week (identified with variable PEHRUSL1 in CPS MORG) but in the survey week worked more than 40 hours (variable PEHRACT1 in CPS MORG).

Regular overtime workers: Workers who report they usually work more than 40 hours per week (identified with variable PEHRUSL1 in CPS MORG).

Pooled data for 2011–2013: CPS MORG data from 2011–2013 with earnings inflated to 2013 dollars and sample observations weighted to reflect the population in 2013; used to increase sample size.

Potentially affected EAP workers: EAP exempt workers who are not in named occupations and are included in the analysis (*i.e.,* white collar, salaried, not eligible for another (non-EAP) overtime pay exemption). This is estimated to be 21.4 million workers.

Price elasticity of demand (with respect to wage): The percentage change in labor hours demanded in response to a one percent change in wages.

Real dollars (2013$): Dollars adjusted using the CPI–U to reflect the purchasing power they would have in 2013.

Salary basis test: The EAP exemptions' requirement that workers be paid on a salary basis, that is, a predetermined amount that cannot be reduced because of variations in the quality or quantity of the employee's work.

Salary level test: The salary a worker must earn in order to be subject to the EAP exemptions. The Department distinguishes among four such tests:

Standard salary level: The weekly salary level associated with the standard duties test that determines (in part) eligibility for the EAP exemptions. The standard salary level was set at $455 per week in the 2004 Final Rule.

HCE compensation level: Workers who meet the standard salary level requirement but not the standard duties test nevertheless are exempt if they pass a minimal duties test and earn at least the HCE total annual compensation required amount. The HCE required compensation level was set at $100,000 per year in the 2004 Final Rule, of which at least $455 per week must be paid on a salary or fee basis.

Short test salary level: The weekly salary level associated with the short duties test (eliminated in 2004).

Long test salary level: The weekly salary level associated with the long duties test (eliminated in 2004).

Workers covered by the FLSA and subject to the Department's regulations: Includes all workers except those excluded from the analysis because they are not covered by the FLSA or subject to the Department's requirements. Excluded workers include: members of the military, unpaid volunteers, the self-employed, many religious workers, and federal employees (with a few exceptions).[59]

The Department also notes that the terms *employee* and *worker* are used interchangeably throughout this analysis.

B. Methodology To Determine the Number of Potentially Affected EAP Workers

i. Overview

This section explains the methodology used to estimate the number and characteristics of workers who are subject to the EAP exemptions. In this proposed rule, as in the 2004 Final Rule, the Department estimated the number of EAP exempt workers because there is no data source that identifies workers as EAP exempt. Employers are not required to report EAP exempt workers to any central agency or as part of any employee or establishment survey. The methodology described here is largely based on the approach the Department used in the 2004 Final Rule. 69 FR 22196–209. All tables include estimates for 2013. Some tables also include estimates for 2005

Accordingly, throughout this NPRM we refer to the total affected workers as 4.7 million (4,646,000 + 36,000, rounded to the nearest 100,000 workers). However, when discussing only those workers affected by the change in the standard salary level test, the number decreases to 4.6 million (4,646,000, similarly rounded).

[56] Academic administrative personnel (including admissions counselors and academic counselors) need to be paid either (1) the salary level or (2) a salary that is at least equal to the entrance salary for teachers in the educational establishment at which they are employed (*see* § 541.204). Entrance salaries at the educational establishment of employment cannot be distinguished in the data and so this alternative is not considered (thus these employees were excluded from the analysis, the same as was done in the 2004 Final Rule).

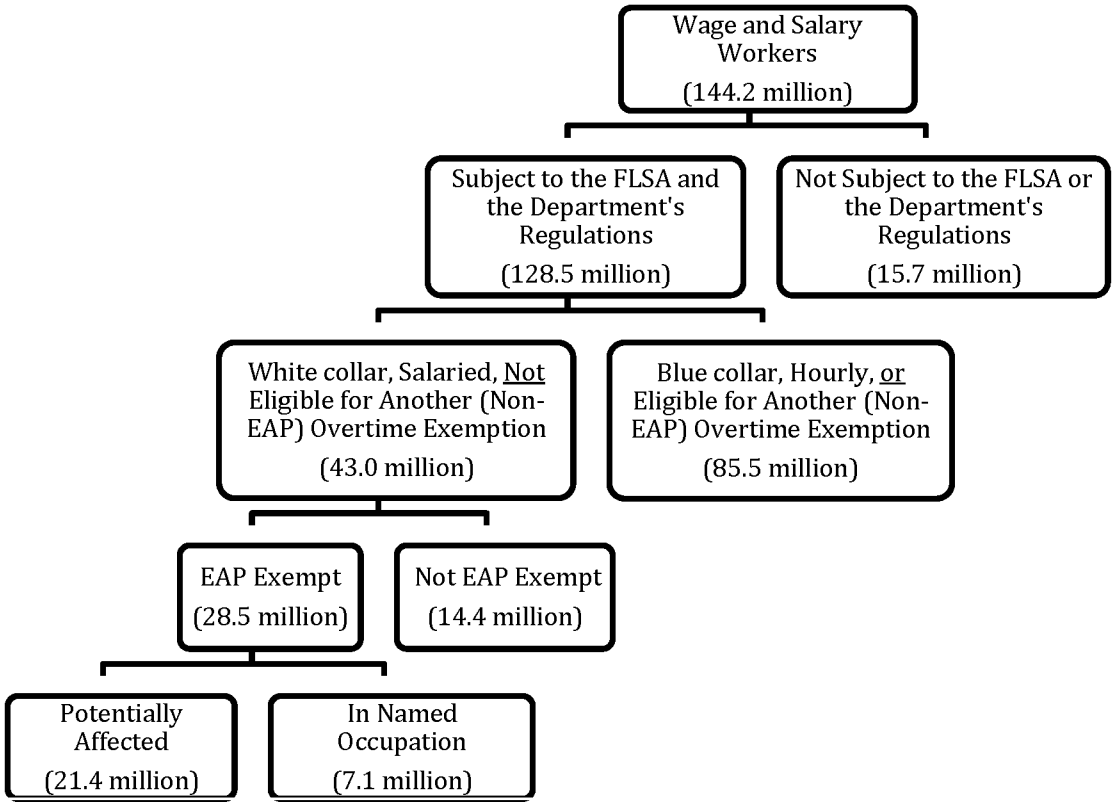
[57] The term physician includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or with a Bachelor of Science in optometry). § 541.304(b).

[58] Judges may not be considered ''employees'' under the FLSA definition. However, since this distinction cannot be made in the data, all judges are excluded from the analysis (the same as was done in the 2004 Final Rule).

[59] Employees of firms with annual revenue less than $500,000 who are not engaged in interstate commerce are also not covered by the FLSA. However, these workers are not excluded from this analysis because the Department has no reliable way of estimating the size of this worker population, although the Department believes it composes a small percent of workers. These workers were also not excluded from the 2004 Final Rule.

(the first full calendar year after the most recent increase to the salary level was implemented) to demonstrate how the prevalence of the EAP exemption has changed from 2005 through 2013. Figure 2 illustrates how the U.S. civilian workforce was analyzed through successive stages to estimate the number of potentially affected EAP workers.

Figure 2: Flow Chart of FLSA Exemptions and Estimated Number of Potentially Affected Workers, 2013



ii. Data

The estimates of EAP exempt workers are based on data drawn from the CPS MORG, which is sponsored jointly by the U.S. Census Bureau and the BLS. The CPS is a large, nationally representative sample of the labor force. Households are surveyed for four months, excluded from the survey for eight months, surveyed for an additional four months, then permanently dropped from the sample. During the last month of each rotation in the sample (month 4 and month 16), employed respondents complete a supplementary questionnaire (the MORG) in addition to the regular survey. This supplement contains the detailed information on earnings necessary to estimate a worker's exemption status.

Although the CPS is a large scale survey, administered to 60,000 households representing the entire nation, it is still possible to have relatively few observations when looking at subsets of employees, such as exempt workers in a specific occupation employed in a specific industry, or workers in a specific region. To increase the sample size, the Department pooled together three years of CPS MORG data (2011 through 2013). Earnings for each 2011 and 2012 observation were inflated to 2013 dollars using the CPI–U, and the weight of each observation was adjusted so that the total number of potentially affected EAP workers in the pooled sample remained the same as the number represented by the 2013 CPS MORG. Thus, the pooled CPS MORG sample uses roughly three times as many observations to represent the same total number of workers in 2013. The additional observations allow the Department to better estimate certain attributes of the potentially affected labor force.

Some assumptions had to be made to use these data as the basis for the analysis. For example, the Department eliminated workers who reported that their weekly hours vary and provided no additional information on hours worked. This was done because the Department cannot estimate impacts for these workers since it is unknown whether they work overtime and therefore unknown whether there would be any need to pay for overtime if their status changed from exempt to nonexempt. The Department reweighted the rest of the sample to account for this change (to keep the same total population estimates). This adjustment assumes that the distribution of hours worked by workers whose hours do not vary is representative of hours worked by workers whose hours do vary. The Department believes that without more information this is an appropriate assumption.[60] To the extent these excluded workers are exempt, if they tend to work more overtime than other workers, then transfer payments, costs, and DWL may be underestimated. Conversely, if they work fewer overtime hours then transfer payments, costs, and DWL may be overestimated.

[60] This is justifiable because other employment characteristics are similar across these two populations. The share of all workers whose hours vary is 6.3 percent.

iii. Number of Workers Covered by the Department's Part 541 Regulations

To estimate the number of workers covered by the FLSA and subject to the Department's part 541 regulations, the Department first excluded workers who are not protected by the FLSA or are not subject to the Department's regulations for a variety of reasons—for instance, they may not be covered by, or considered to be employees under, the FLSA. These workers include:

- Military personnel,
- unpaid volunteers,
- self-employed individuals,
- clergy and other religious workers, and
- federal employees (with a few exceptions described below).

Many of these workers are excluded from the CPS MORG: members of the military on active duty, unpaid volunteers, and the self-employed. For other categories that are not automatically excluded from the CPS data, such as unpaid workers, that is, workers with zero wages and earnings but who report being employed, the Department has implemented measures to screen them out.

Religious workers were excluded from the analysis after being identified by their occupation codes: 'clergy' (Census occupational code 2040), 'directors, religious activities and education' (2050), and 'religious workers, all other' (2060). Most employees of the federal government are covered by the FLSA but are not subject to the Department's part 541 regulations because their minimum wage and overtime pay are regulated by the Office of Personnel Management (OPM).[61] *See* 29 U.S.C. 204(f). Exceptions exist for U.S. Postal Service employees, Tennessee Valley Authority employees, and Library of Congress employees. *See* 29 U.S.C. 203(e)(2)(A). These covered federal workers were identified and included in the analysis using occupation and/or industry codes.[62] Employees of firms that have annual revenue of less than $500,000 and who are not engaged in interstate commerce are also not covered by the FLSA. The Department does not exclude them from the analysis because it has no reliable way of estimating the size of this worker population, although the Department believes it is a small percentage of workers. The 2004 Final Rule analysis similarly did not adjust for these workers.

Table 5 presents the Department's estimates of the total number of workers, and the number of workers covered by the FLSA and subject to the Department's part 541 regulations in 2005 and 2013. The Department estimated that in 2013 there were 144.2 million wage and salary workers in the United States. Of these, 128.5 million were covered by the FLSA and subject to the Department's regulations (89.1 percent). The remaining 15.7 million workers were excluded from coverage by the FLSA for the reasons described above and delineated in Table 6.

TABLE 5—ESTIMATED NUMBER OF WORKERS COVERED BY THE FLSA AND SUBJECT TO THE DEPARTMENT'S PART 541 REGULATIONS, 2005 AND 2013

Year	Civilian employment (1,000s)	Subject to the Department's regulations	
		Number (1,000s)	Percent
2005	142,126	122,716	86.3
2013	144,214	[a] 128,511	89.1

[a] Estimate uses pooled data for 2011–2013.

TABLE 6—REASON NOT SUBJECT TO THE DEPARTMENT'S PART 541 REGULATIONS, 2013

Reason	Number (1,000s)
Total	15,703
Self-employed and unpaid workers	12,130
Religious workers	518
Federal employees [a]	3,057

Note: 2013 estimates use pooled data for 2011–2013.

[a] Most employees of the federal government are covered by the FLSA but are not covered by part 541. Exceptions are for U.S. Postal Service employees, Tennessee Valley Authority employees, and Library of Congress employees.

iv. Number of Workers in the Analysis

After limiting the analysis to workers covered by the FLSA and subject to the Department's regulations, several other groups of workers are identified and excluded from further analysis since they are unlikely to be affected by this proposed rule. These include:

- Blue collar workers,
- workers paid hourly, and
- workers who are exempt under certain other (non-EAP) exemptions.

In 2013 there were 46.6 million blue collar workers (Table 7). These workers were identified in the CPS MORG data using data from the U.S. Government Accountability Office's (GAO) 1999 white collar exemptions report [63] and the Department's 2004 regulatory impact analysis. Supervisors in traditionally blue collar industries are classified as white collar workers because their duties are generally managerial or administrative, and therefore they were not excluded as blue collar workers. In 2013, 76.1 million workers were paid on an hourly basis.[64]

Also excluded from further analysis were workers who are exempt under certain other (non-EAP) exemptions. Although some of these workers may also be exempt under the EAP exemptions, even if these workers lost their EAP exempt status they would remain exempt from the minimum wage and/or overtime pay provisions and thus were excluded from the analysis. In 2013 an estimated 4.2 million workers, including some agricultural and transportation workers, were excluded from further analysis because they were subject to another (non-EAP) overtime exemption. *See* Appendix A: Methodology for Estimating Exemption Status, for details on how this population was identified.

[61] Federal workers are identified in the CPS MORG with the class of worker variable PEIO1COW.

[62] Postal Service employees were identified with Census industry code 6370. Tennessee Valley Authority employees were identified as federal workers employed in the electric power generation, transmission, and distribution industry (570) and in Kentucky, Tennessee, Mississippi, Alabama, Georgia, North Carolina, or Virginia. Library of Congress employees were identified as federal workers under Census industry 'libraries and archives' (6770) and residing in Washington, DC.

[63] *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place,* GAO/HEHS–99–164, p. 40–41.

[64] The CPS MORG variable PEERNHRY is used to determine hourly status.

TABLE 7—ESTIMATED NUMBER OF WORKERS COVERED BY THE FLSA AND SUBJECT TO THE DEPARTMENT'S REGULATIONS, 2005 AND 2013 (1,000S)

Year	Subject to DOL's Part 541 Reg.	Workers in the analysis [a]	Excluded from analysis	Reason Excluded [b]				
				Blue collar workers	Hourly workers	Another exemption [c]		
						Agriculture	Transportation	Other
2005	122,716	39,689	83,027	46,245	74,192	773	1,944	1,006
2013	128,511	42,970	85,541	46,644	76,113	911	1,827	1,484

Note: 2013 estimates use pooled data for 2011–2013.
[a] Wage and salary workers who are white collar, salaried, and not eligible for another (non-EAP) overtime exemption.
[b] Numbers do not add to total due to overlap.
[c] Eligible for another (non-EAP) overtime pay exemption.

The Department excluded some of these workers from the population of potentially affected EAP workers in the 2004 Final Rule, but not all of them. Agricultural and transportation workers are two of the largest groups of workers excluded from this analysis, and they were similarly excluded in 2004. Agricultural workers were identified by occupational-industry combination.[65] Transportation workers were defined as those who are subject to the following FLSA exemptions: section 13(b)(1), section 13(b)(2), section 13(b)(3), section 13(b)(6), or section 13(b)(10). This methodology is the same as in the 2004 Final Rule and is explained in Appendix A. The Department excluded 911,000 agricultural workers and 1.8 million transportation workers from the analysis. The remaining 1.5 million excluded workers are included in multiple FLSA minimum wage and overtime exemptions and are detailed in Appendix A. However, of these 1.5 million workers, all but 28,000 are either blue collar or hourly and thus the impact of excluding these workers is negligible.

For 2013 there were a total of 85.5 million workers excluded from the analysis for the reasons denoted above. These eliminations left 43.0 million workers covered by the FLSA and potentially affected by this proposed rulemaking.

v. Number of Potentially Affected EAP Workers

After excluding workers not subject to the Department's FLSA regulations and workers who are unlikely to be affected by this proposed rulemaking (*i.e.,* blue collar workers, workers paid hourly, workers who are subject to another (non-EAP) overtime exemption), the Department estimated the number of workers for whom employers might claim the EAP exemptions. There are two ways a worker can lose overtime protection pursuant to the EAP exemptions: the standard EAP test and the HCE test. To be exempt under the standard EAP test the employee must:

- Be paid a predetermined and fixed salary that is not subject to reductions because of variations in the quality or quantity of work performed (the salary basis test),
- earn at least a designated salary amount; the salary level has been set at $455 per week since 2004 (the salary level test), and
- perform work activities that primarily involve executive, administrative, or professional duties as defined by the regulations (the duties test).

The HCE test requires the employee to pass the same standard salary basis and salary level tests. However, the HCE duties test is much less restrictive than the standard duties test, and the employee must earn at least $100,000 in total annual compensation, including at least $455 per week paid on a salary or fee basis, while the balance may be paid as nondiscretionary bonuses and commissions.

Hourly computer employees who earn at least $27.63 per hour and perform certain duties are exempt under section 13(a)(17) of the FLSA. These workers are considered part of the EAP exemptions but were excluded from the analysis because they are paid hourly and will not be affected by this proposed rulemaking (these workers were similarly excluded in the 2004 analysis). Salaried computer workers are exempt if they meet the salary and duties tests applicable to the EAP exemptions, and are included in the analysis since they will be impacted by this proposed rulemaking.

Additionally, administrative and professional employees may be paid on a fee basis,[66] as opposed to a salary basis, at a rate of at least the amount specified by the Department in the regulations. However, the CPS MORG does not identify workers paid on a fee basis (only hourly or non-hourly). Thus in the analysis, workers paid on a fee basis are considered with non-hourly workers and consequently classified as ''salaried'' (as was done in the 2004 Final Rule).

Weekly earnings are also available in the data, which allowed the Department to identify which workers passed the salary level tests.[67] The CPS MORG data do not capture information about job duties. Therefore, to determine whether a worker met the duties test, the Department used an analysis performed by officials from the WHD in 1998 in response to a request from the GAO. Because WHD enforces the FLSA's overtime requirements and regularly assesses workers' exempt status, WHD's representatives were uniquely qualified to provide the analysis. The analysis was used in both the GAO's 1999 white collar exemptions report[68] and the Department's 2004 regulatory impact analysis. *See* 69 FR 22198.

WHD's representatives examined 499 occupational codes, excluding nine that

[65] In the 2004 Final Rule all workers in agricultural industries were excluded. 69 FR 22197. Here only workers also in select occupations were excluded since not all workers in agricultural industries qualify for the agricultural overtime pay exemptions. This method better approximates the true number of exempt agricultural workers and provides a more conservative—*i.e.,* greater—estimate of the number of affected workers.

[66] Payment on a ''fee basis'' occurs where an employee is paid an agreed sum for a single job regardless of the time required for its completion. § 541.605(a). Salary level test compliance for fee basis employees is assessed by determining whether the hourly rate for work performed (*i.e.,* the fee payment divided by the number of hours worked) would total at least $455 per week if the employee worked 40 hours. § 541.605(b).

[67] The CPS MORG variable PRERNWA, which measures weekly earnings, is used to identify weekly salary. The CPS variable includes nondiscretionary bonuses and commissions, which do not count toward the standard salary level test. This discrepancy between the earnings variable used and the FLSA definition of salary may cause a slight overestimate of the number of workers estimated to meet the standard test.

[68] *Fair Labor Standards Act: White Collar Exemptions in the Modern Work Place.* (1999). GAO/HEHS–99–164, p. 40–41.

were not relevant to the analysis for various reasons (one code was assigned to unemployed persons whose last job was in the Armed Forces, some codes were assigned to workers who are not FLSA covered, others had no observations). Of the remaining occupational codes, WHD's representatives determined that 251 occupational codes likely included EAP exempt workers and assigned one of four probability codes reflecting the estimated likelihood, expressed as ranges, that a worker in a specific occupation would perform duties required to meet the EAP duties tests. The Department supplemented this analysis in the 2004 Final Rule regulatory impact analysis when the HCE exemption was introduced. The Department modified the four probability codes for highly paid workers based upon our analysis of the provisions of the highly compensated test relative to the standard duties test (Table 8). To illustrate, WHD representatives assigned exempt probability code 3 to the occupation ''first-line supervisors/managers of construction trades and extraction workers'' (Census code 6200), which indicates that a worker in this occupation has a 10 to 50 percent likelihood of meeting the standard EAP duties test. However, if that worker earns at least $100,000 annually, he or she has between a 58.4 percent and 60 percent probability of being exempt under the shorter HCE test.

The occupations identified by the GAO in 1999 and used by the Department in the 2004 Final Rule map to an earlier occupational classification scheme (the 1990 Census Occupational Codes). Therefore, for this proposed rule an occupational crosswalk was used to map the previous occupational codes to the 2002 Census Occupational Codes which are used in the CPS MORG 2002 through 2010 data, and to the 2010 Census Occupational Codes which are used in the CPS MORG 2011 through 2013 data.[69] If a new occupation is comprised of more than one previous occupation, then the new occupation's probability code is the weighted average of the previous occupations' probability codes, rounded to the closest probability code.

TABLE 8—PROBABILITY WORKER IN CATEGORY PASSES THE DUTIES TEST

Probability code	The Standard EAP Test		The HCE Test	
	Lower bound (percent)	Upper bound (percent)	Lower bound (percent)	Upper bound (percent)
0	0	0	0	0
1	90	100	100	100
2	50	90	94	96
3	10	50	58.4	60
4	0	10	15	15

These codes provide information on the likelihood an employee met the duties test but they do not identify the workers in the CPS MORG who actually passed the test. Therefore, the Department designated workers as exempt or nonexempt based on the probabilities. For example, for every ten public relations managers, between five and nine were estimated to pass the standard duties test (based on probability category 2). However, it is unknown which of these ten workers are exempt; therefore, the Department must determine the status for these workers. Exemption status could be randomly assigned with equal probability, but this would ignore the earnings of the worker as a factor in determining the probability of exemption. The probability of qualifying for the exemption increases with earnings because higher paid workers are more likely to perform the required duties, an assumption adhered to by both the Department in the 2004 Final Rule and the GAO in its 1999 Report.[70] The Department estimated the probability of exemption for each worker as a function of both earnings and the occupation's exempt probability category using a gamma distribution.[71] Based on these revised probabilities, each worker was assigned exempt or nonexempt status based on a random draw from a binomial distribution using the worker's revised probability as the probability of success. Thus, if this method is applied to ten workers who each have a 60 percent probability of being exempt, six workers would be expected to be designated as exempt.[72] However, which particular workers are designated as exempt may vary with each set of ten random draws. For details see Appendix A.

The Department estimated that of the 43.0 million workers considered in the analysis, 28.5 million qualified for the EAP exemptions (Table 9). However, some of these workers were excluded from further analysis because they would not be affected by the proposed rule. This excluded group contains workers in named occupations who are not required to pass the salary requirements (although they must still pass the duties tests) and therefore whose exemption status is not dependent on their earnings. These occupations include physicians (identified with Census occupation codes 3010, 3040, 3060, 3120), lawyers (2100), teachers (occupations 2200–2550 and industries 7860 or 7870), academic administrative personnel (school counselors (occupation 2000 and industries 7860 or 7870) and educational administrators (occupation 0230 and industries 7860 or 7870)), and outside sales workers (a subset of occupation 4950). Out of the 28.5

[69] Crosswalks and methodology available at: *http://www.census.gov/people/io/methodology/*.

[70] For the EAP exemptions, the relationship between earnings and exemption status is not linear and is better represented with a gamma distribution. For the HCE exemption, the relationship between earnings and exemption can be well represented with a linear function because the relationship is linear at high salary levels (as determined by the Department in the 2004 Final Rule). Therefore, the gamma model and the linear model would produce similar results. *See* 69 FR 22204–08, 22215–16.

[71] The gamma distribution was chosen because, during the 2004 revision, this non-linear distribution best fit the data compared to the other non-linear distributions considered (*i.e.,* normal and lognormal). A gamma distribution is a general statistical distribution that is based on two parameters that control the scale (alpha) and shape (in this context, called the rate parameter, beta).

[72] A binominal distribution is frequently used for a dichotomous variable where there are two possible outcomes; for example, whether one owns a home (outcome of 1) or does not own a home (outcome of 0). Taking a random draw from a binomial distribution results in either a zero or a one based on a probability of ''success'' (outcome of 1). This methodology assigns exempt status to the appropriate share of workers without biasing the results with manual assignment.

million workers who are EAP exempt, 7.1 million, or 25.1 percent, were in named occupations in 2013. Thus these workers would be unaffected by changes in the standard salary level test. The 21.4 million EAP exempt workers remaining in the analysis are referred to in this proposed rulemaking as ''potentially affected.'' In addition to the 21.4 million potentially affected EAP exempt workers, the Department estimates that an additional 6.3 million salaried white collar workers who do not satisfy the duties test and who currently earn at least $455 per week but less than the proposed salary level will have their overtime protection strengthened because their exemption status will be clear based on the salary test alone without the need to examine their duties.

TABLE 9—ESTIMATED PERCENTAGES OF EAP EXEMPT WORKERS IN NAMED OCCUPATIONS, 2005 AND 2013

Year	Workers in the analysis (millions) [a]	EAP exempt (millions)	EAP exempt in named occupations (millions) [b]	% of EAP exempt in named occupations
2005	39.7	25.0	6.4	25.7
2013	43.0	28.5	7.1	25.1

Note: 2013 estimates use pooled data for 2011–2013.
[a] Wage and salary workers who are white collar, salaried, and not eligible for another (non-EAP) overtime exemption.
[b] Workers not subject to a salary level test includes, but is not limited to, teachers, academic administrative personnel, physicians, lawyers, and judges.

There are three groups of workers who lose minimum wage and overtime protections under the EAP exemptions: (1) Those passing just the standard EAP tests (*i.e.,* passing the standard duties test, the salary basis test, and the standard salary level test and not passing the HCE tests); (2) those passing just the HCE tests (*i.e.,* passing the HCE duties test, salary basis test, and the total compensation test and not passing the standard duties tests); and (3) those passing both tests. Based on analysis of the occupational codes and CPS earnings data, the Department has concluded that in 2013, of the 21.4 million potentially affected EAP workers, approximately 15.7 million passed only the standard EAP test, 5.6 million passed both the standard and the HCE tests, and approximately 75,000 passed only the HCE test (Table 10). When impacts are discussed in section VII.D., workers who pass both tests will be considered with those who pass only the standard salary level test because this salary level test is more restrictive (*i.e.,* the worker may continue to pass the standard salary level test even if he or she no longer passes the HCE compensation test).

TABLE 10—ESTIMATED NUMBER OF WORKERS EXEMPT UNDER THE EAP EXEMPTIONS BY TEST TYPE, 2005 AND 2013

Year	Potentially affected EAP workers (millions)			
	Total	Pass standard test only	Pass both tests	Pass HCE test only
2005	18.6	15.8	2.8	0.03
2013	21.4	15.7	5.6	0.08

Note: 2013 estimates use pooled data for 2011–2013.

vi. Characteristics of Potentially Affected EAP Workers

After estimating the population of workers who are subject to the EAP exemptions and potentially affected by this proposed rulemaking, the Department tabulated the characteristics of these workers. The characteristics considered and presented here include: industry of employment, occupation, and Metropolitan Statistical Area (MSA) status. As previously noted, the Department estimated 2013 values using CPS MORG data pooled from 2011–2013 in order to increase the sample size.

Table 11 presents the estimated number of potentially affected EAP workers broken down into 13 major industry groups.[73] The industry with the most potentially affected EAP workers was professional and business services, with 4.2 million potentially affected EAP workers. Other industries where a large number of workers were potentially affected are education and health services (3.4 million), financial activities (3.3 million), and manufacturing (3.3 million). The industry with the smallest number of potentially affected EAP workers was agriculture, forestry, fishing, and hunting (33,000).

Looking at exemption status by occupation, 10.8 million workers employed in the management, business, and financial occupations were potentially affected; this occupation category accounts for roughly half of all potentially affected EAP workers. Professional and related occupations also employed many of the potentially affected EAP workers (7.0 million, which is 32.9 percent of all potentially affected EAP workers).

The Department considered MSA status because workers in cities and suburban areas tend to be paid more than workers in rural areas. The percentage of potentially affected EAP workers (92.0 percent) who live in MSAs is larger than the percentage of the total workforce (85.8 percent) who live in MSAs.

[73] *See* Appendix B: Additional Tables, for potentially affected workers categorized into the more detailed 51 industry group classifications.

TABLE 11—POTENTIALLY AFFECTED EAP WORKERS BY INDUSTRY, OCCUPATION, AND MSA STATUS, NUMBER AND AS PERCENT OF TOTAL, 2013

Industry, occupation, MSA status	Potentially affected EAP workers (millions)	As percent of potentially affected EAP workers
Total	21.4	100.0
By Industry		
Agriculture, forestry, fishing, & hunting	0.03	0.2
Mining	0.18	0.8
Construction	0.76	3.6
Manufacturing	3.27	15.3
Wholesale & retail trade	2.42	11.3
Transportation & utilities	0.80	3.7
Information	0.90	4.2
Financial activities	3.30	15.4
Professional & business services	4.20	19.6
Education & health services	3.41	15.9
Leisure & hospitality	0.75	3.5
Other services	0.55	2.6
Public administration	0.83	3.9
By Occupation		
Management, business, & financial	10.79	50.4
Professional & related	7.04	32.9
Services	0.19	0.9
Sales & related	2.19	10.2
Office & administrative support	0.97	4.5
Farming, fishing, & forestry	0.00	0.0
Construction & extraction	0.02	0.1
Installation, maintenance, & repair	0.05	0.2
Production	0.10	0.5
Transportation & material moving	0.04	0.2
By MSA Status		
MSA	19.67	92.0%
Non-MSA	1.62	7.6%
Not Identified	0.09	0.4%

Note: Pooled data for 2011–2013.

C. Determining the Revised Salary Level Test Values

i. Background

The Department proposes to set the EAP standard salary level at the 40th percentile of the weekly earnings distribution for all full-time salaried workers and to set the HCE compensation test equal to the 90th percentile (at an annual salary equivalent) of this distribution. These methods were used because they generate salary levels that (1) were deemed to be appropriate in distinguishing between workers who should and should not be exempt; (2) are easy to calculate and thus easy to replicate, creating transparency through simplicity; and (3) generate consistent salary levels.[74] The Department believes that setting the standard salary level at the 40th percentile earnings ($921 per week) allows for reliance on the current standard duties test without an unacceptably high risk of overtime-eligible employees being misclassified as EAP exempt and denied overtime protection. Additionally, the Department believes that setting the standard salary level at the 40th percentile earnings will not result in an unacceptably high risk that employees performing bona fide EAP duties will become entitled to overtime protection by virtue of the salary test.

The methodologies used to revise the EAP salary levels have varied somewhat across the seven updates to the salary level test since it was implemented in 1938. To guide the determination of the proposed salary level, the Department considered methodologies used previously to revise the EAP salary levels. In particular, the Department focused on the 1958 revisions and the most recent revisions in 2004. The 1958 methodology is particularly instructive in that it synthesized previous approaches to setting the salary level, and the basic structures it adopted have been a touchstone in subsequent rulemakings (with the exception of 1975).

The 1958 Revisions

In 1958, the Department updated the salary levels based on a 1958 Report and Recommendations on Proposed Revision of Regulations, Part 541, by Harry S. Kantor (Kantor Report). To determine the revised salary levels the Department looked at data collected during WHD investigations on actual salaries paid to exempt EAP employees, grouped by geographic region, industry groups, number of employees, and size of city. The Department then set the salary level so that no more than about 10 percent of those in the lowest-wage

[74] On a quarterly basis, BLS publishes a table of deciles of the weekly wages of full-time salaried workers, calculated using CPS data, which will provide employers with information on changes in salary levels prior to the annual updates. *http://www.bls.gov/cps/research_series_earnings_nonhourly_workers.htm.*

region, lowest-wage industry, smallest establishment group, or smallest city group would fail to meet the test. Kantor Report at 6.[75] [76] This methodology is referred to as the Kantor method and the Department followed a similar methodology in setting the salary levels in 1963 and 1970.

The 2004 Revisions

A significant change in 2004 from the Kantor method was that the salaries of both exempt and nonexempt full-time salaried workers in the South and retail industry were used to determine levels (hereafter referred to as the 2004 method), rather than the salaries of exempt workers only. However, because the salaries of exempt workers on average are higher than the salaries of all full-time salaried workers, the Department selected a higher earnings percentile for full-time salaried workers. Based on the Department's 2004 analysis, the 20th percentile of earnings for exempt and nonexempt full-time salaried workers in the South and retail industry achieved a result very similar to the 10th percentile for workers in the lowest-wage regions and industries who were estimated to be exempt. 69 FR 22169.

ii. Proposed Methodology for the Standard Salary Level

The Department proposes to set the standard salary level at the 40th percentile of the distribution of weekly earnings for all full-time salaried workers nationwide. For the purposes of this proposed rulemaking, the Department relied on BLS calculations of the dollar value of the 40th earnings percentile from the CPS MORG data. BLS limited the population to salaried workers who work at least 35 hours per week and determined the specified percentile of the resulting weighted weekly earnings distribution.[77]

This methodology differs somewhat in specifics from previous revisions to the salary levels but the general concept holds: define a relevant population of workers, estimate an earnings distribution for that population, then set the salary level to a designated percentile of that distribution in order for the salary to serve as a meaningful line of demarcation between those Congress intended to protect and those who may qualify for exemption. The proposed method continues the evolution of the Department's approach from the Kantor method to the 2004 method.

The Department spent considerable time evaluating the previous methodologies. Where the proposed methodology differs from past methodologies, the Department believes the proposed methodology is an improvement. The Department compared the proposed method with the past methods, and the reasons for selecting the proposed method are detailed in the rest of this section.

The Kantor and 2004 Methods

The Department replicated the Kantor method and the 2004 method to evaluate and compare them to the proposed methodology.[78] Although the Department was able to replicate the 1958 and 2004 methods reasonably well, we could not completely replicate those methods due to changes in data availability, occupation classification systems, and incomplete documentation. In general, there are four steps in the process:

1. Identify workers likely to be members of the population of interest.
2. Further narrow the population of interest by distinguishing that sub-population employed in low-wage categories.
3. Estimate the distribution of earnings for these workers.
4. Identify the salary level that is equal to a pre-determined percentile of the distribution.

The population of workers considered for purposes of setting the salary level depends on whether the 2004 method or the Kantor method is used. In replicating both methods, we limited the population to workers subject to the FLSA and covered by the Department's part 541 provisions, and excluded EAP exempt workers in named occupations, and those exempt under another (non-EAP) exemption. For the 2004 method, the Department further limited the population to full-time salaried workers, and for the Kantor method we further limited the population of interest by only including those workers determined as likely to be EAP exempt (see more detailed methodology explanations in section VII.B. and Appendix A).

During the 2004 revisions the Department identified two low-wage categories: The South (low-wage geographic region), and the retail industry (low-wage industry). For this proposed rule the Department identified low-wage categories by comparing average weekly earnings across categories for the populations of workers used in the Kantor method and the 2004 method. The South was determined to be the lowest-wage region and was used for the 2004 method; however, the Department chose to use a more detailed geographical break-down for the Kantor method to reflect the geographic categories Kantor used. Therefore, for the Kantor method the East South Central Division is considered the lowest-wage geographical area.[79] The Department found that the industry with the lowest mean weekly earnings depends on whether the Kantor method or the 2004 method's population was used. Therefore, three industries are considered low-wage: Leisure and hospitality, other services, and public administration. The Department also considered non-MSAs as a low-wage sector in the Kantor method. The 2004 revision did not consider population density but the Kantor method examined earnings across population size groups. In conclusion, the 2004 method looks at workers in the South and low-wage industries whereas the Kantor method looks at workers in the East South Central Division, non-MSAs, and the three low-wage industries.

Next, the Department estimated the distributions of weekly earnings of two populations: (1) Workers who are in at least one of the low-wage categories and in the Kantor population, and (2) workers who are in at least one of the low-wage categories and in the 2004 population. From these distributions, alternate salary levels were identified based on pre-determined percentiles. For the Kantor method, the salary level for the long duties test is identified based on the 10th percentile of weekly earnings for the relevant population of likely EAP exempt workers, while the 2004 method salary level is identified based on the 20th percentile of weekly

[75] The Kantor method was based on an analysis of a survey of exempt workers as determined by investigations conducted by WHD. Subsequent analyses, including both the 2004 rulemaking and this proposed rule, have estimated exempt status using multiple data sources.

[76] Because the salary level test is likely to have the largest impact on the low-wage categories of the economy (*e.g.,* low-wage regions and industries), salaries in those regions/industries were selected as the basis for the required salary level under the Kantor method.

[77] The Census Bureau publishes a public-use version of the CPS MORG data, which is very similar to the data used by BLS but involves a few changes to protect respondents' confidentiality. The salary level found with the public-use files is only very slightly different from that obtained with the confidential data.

[78] The Department followed the same methodology used in the 2004 Final Rule for estimating the Kantor method with minor adjustments. In an attempt to more accurately estimate the Kantor method, for example, this analysis included non-MSAs as a low-wage sector as Kantor did but the 2004 revisions did not.

[79] The East South Central Division is a subset of the South and includes Alabama, Kentucky, Mississippi, and Tennessee. If the South is used instead, the resulting salary levels would increase slightly.

earnings for the relevant population of both exempt and nonexempt salaried workers. Using 2013 CPS MORG data, the 2004 method resulted in a salary level of $577 per week and the Kantor method resulted in a salary level of $657 per week. Table 12 presents the distribution of weekly earnings used to estimate the salary levels under the proposed method, the 2004 method, and the Kantor method.

TABLE 12—WEEKLY EARNINGS DISTRIBUTION, 2013

Percentile	Distribution of weekly earnings			Distribution of annual earnings [a]		
	Full-Time Salaried	2004 Method [b]	Kantor Method [c]	Full-Time Salaried	2004 Method [b]	Kantor Method [c]
5	$378	$330	$577	$19,656	$17,148	$30,000
10	490	416	657	25,480	21,632	34,176
15	586	500	721	30,472	26,000	37,500
20	645	577	780	33,540	30,000	40,586
25	726	634	850	37,752	32,968	44,200
30	773	697	913	40,196	36,247	47,486
35	852	769	976	44,304	39,988	50,732
40	921	812	1,035	47,892	42,209	53,817
45	981	878	1,095	51,012	45,659	56,960
50	1,065	961	1,171	55,380	49,972	60,879
55	1,154	1,015	1,250	60,008	52,762	65,000
60	1,248	1,095	1,346	64,896	56,960	69,992
65	1,363	1,194	1,434	70,876	62,093	74,566
70	1,478	1,295	1,538	76,856	67,317	80,000
75	1,626	1,433	1,659	84,552	74,533	86,245
80	1,828	1,576	1,827	95,056	81,952	95,000
85	2,000	1,792	1,999	104,000	93,208	103,958
90	2,349	2,071	2,341	122,148	107,707	121,721
95	3,077	2,732	2,885	160,004	142,050	150,000

Note: Estimates for the full-time salaried percentiles are from BLS. Estimates for the 2004 method and the Kantor method are based on pooled CPS MORG public-use data for 2011–2013. The use of pooled data allows us to better represent both earnings distributions and the characteristics of affected EAP workers.

[a] Weekly earnings multiplied by 52.

[b] Full-time salaried workers in the South or employed in a low-wage industry (excludes workers not subject to the FLSA, not subject to the salary level test, and in agriculture or transportation).

[c] Salaried, white collar workers who earn at least $455 per week, pass the EAP duties test, and either live in the East South Central Division or a non-MSA or are employed in a low-wage industry (excludes workers not subject to FLSA, not subject to the salary level test, and in agriculture or transportation).

iii. Rationale for the Methodology Chosen

The salary level test has historically been intended to serve as an initial bright-line test for overtime eligibility for white collar employees. As discussed previously, however, there will always be white collar overtime-eligible employees who are paid above the salary threshold. A low salary level increases the number of these employees. The necessity of applying the duties test to these overtime-protected employees consumes employer resources, may result in misclassification (which imposes additional costs to employers and society in the form of litigation), and is an indicator of the effectiveness of the salary level. Similarly, there will always be employees performing bona fide EAP duties who are paid below the salary threshold; the inability of employers to claim the EAP exemption for these employees is also an indicator of the effectiveness of the salary level. Selecting the standard salary level will inevitably affect the number of workers falling into each of these two categories. The Kantor method sought to minimize the number of white collar employees who pass the duties test but were excluded from the exemption by the salary threshold and therefore set the salary level at the bottom 10 percent of exempt EAP employees in low wage regions and industries so as to prevent ''disqualifying any substantial number of such employees.'' Kantor Report at 5; *see* Weiss Report at 9. This method was based on the long/short test structure, in which employees paid at lower salary levels were protected by significantly more rigorous duties requirements than are part of the current standard duties test. This approach, however, does not take into sufficient account the inefficiencies of applying the duties test to large numbers of overtime-eligible white collar employees and the possibility of misclassification of those employees as exempt.

In this rulemaking, the Department wants to correct for the elimination of the long duties test and set a salary level that appropriately classifies white collar workers as entitled to minimum wage and overtime protection or potentially exempt. Thus the Department's proposed standard salary level is higher than the level the Kantor or 2004 methods would generate but still lower than the historical average for the short test. Setting the salary level at the 40th percentile of weekly earnings for full-time salaried workers will reduce the number of employees subject to the standard duties test by raising the salary threshold; the Department believes that this will simplify the determination of exemption status for employers and will result in reduced misclassification of overtime-eligible white collar workers as exempt and reduced litigation. At the 40th percentile, 10.6 million white collar employees would no longer be subject to potential litigation over the duties they perform (4.6 million currently EAP exempt employees who would be newly entitled to overtime due to the increase in the salary threshold and 6.0 million overtime-eligible white collar employees who are paid between $455 and $921 per week whose exemption status would no longer depend on the application of the duties test). The proposed salary level will therefore more efficiently distinguish between employees who may meet the duties requirement of the

EAP exemption and those who do not, without necessitating a return to the more detailed long duties test.

The proposed salary level also affects the likelihood of workers being misclassified as exempt from overtime pay. This provides an additional measure of the effectiveness of the salary level as a bright-line test delineating exempt and nonexempt workers. The Department estimated the number of workers misclassified as exempt as the number of salaried white collar workers who: Earn at least $455 per week; do not satisfy the EAP duties tests; are not in a named occupation (or exempt under another (non-EAP) exemption); usually work overtime; and do not usually receive overtime pay.[80] The Department estimates that almost 20 percent of the 11.6 million salaried white collar workers who fail the duties test are misclassified as exempt. The Department estimates that at the proposed salary level, the number of overtime-eligible white collar workers earning at or above the salary level will decrease by 6.0 million, and that approximately 806,562 (13.5 percent) of these workers are currently misclassified as exempt.

In this section the Department assesses the impact of the standard salary level as a bright-line test for the EAP exemptions by examining: (1) The number of white collar workers who pass the salary level test but not the duties test and (2) the number of white collar workers who pass the duties test but not the salary level test. The Department makes this assessment at the current salary level and the proposed salary level, while holding all other factors determining exempt status constant (*e.g.,* not considering whether the duties test is correctly applied or potential employer response to the change in the salary level test). Examining the impact of the salary threshold in isolation from the application of the duties test or employer adjustments to pay or hours does not provide a complete picture of the impact of a new salary threshold. It does, however, allow the Department to evaluate the effectiveness of the salary level in protecting overtime-eligible white collar employees without unduly excluding from the exemption employees performing EAP duties.

In order to calculate the potential impact on the two groups of workers, the Department estimated: (1) The number of salaried white collar workers who are eligible for overtime pay because they do not pass the standard EAP duties test, but earn above a specific salary level; and (2) the number of salaried white collar workers who satisfy the standard duties test but earn less than a specific standard salary level.[81] These numbers were estimated at the current salary level ($455) and the proposed standard salary level of the 40th percentile of weekly wages of all full-time salaried workers ($921).

As a benchmark, the Department estimates that at the current standard salary threshold, there are 11.6 million salaried white collar workers who fail the standard duties test and are therefore overtime eligible, but earn at least the $455 threshold, while there are only 845,500 salaried white collar workers who pass the standard duties test but earn less than the $455 level. Thus the number of white collar workers who pass the current salary threshold test but not the duties test is nearly 14 times the number of white collar workers who pass the duties test but are paid below the salary threshold. This underscores the large number of overtime-eligible workers for whom employers must perform a duties analysis, and who may be at risk of misclassification as EAP exempt. If the salary threshold were raised to the 40th percentile, the number of overtime-eligible salaried white collar workers who would earn at least the threshold but do not pass the duties test would be reduced to 5.6 million. At the 40th percentile, the number of salaried white collar workers who would pass the standard duties test but earn less than the 40th percentile would be 4.6 million (approximately 25 percent of all white collar salaried employees who pass the standard duties test). While this number is higher than the number of such employees under the Kantor method, it includes employees who would not have passed the more rigorous long duties test and therefore were not included under that approach.

[80] Based on workers' response to the CPS–MORG question concerning whether they receive overtime pay, tips, or commissions at their job (''PEERNUOT'' variable).

[81] These populations are limited to salaried, white collar workers subject to the FLSA and the Department's part 541 regulations, and not eligible for another (non-EAP) exemption, not in a named occupation, and not HCE only.

Figure 3: Percentage of White Collar Salaried Workers by Earnings and Duties Test Status

As illustrated in Figure 3, as the salary level increases there is a decrease in the share of overtime-eligible white collar workers for whom employers would be required to make an assessment under the duties test and who would be subject to possible misclassification. At the same time, as the salary level increases there is an increase in the share of white collar workers who pass the duties test but are screened from exemption by the salary threshold. At the current salary level, there is a very large gap between white collar workers who are overtime eligible but earn at least the threshold (about 85 percent of all salaried white collar workers who fail the duties test are paid at least $455 per week) and white collar workers who pass the standard duties test but do not meet the current salary level (about 4 percent of all salaried white collar workers who pass the duties test are paid less than $455 per week). At the proposed salary level of the 40th percentile of weekly earnings of full-time salaried workers, the percentage of overtime-eligible white collar workers who earn above the threshold (and thus would be at risk of misclassification) remains substantially higher than the percentage of white collar workers who pass the duties test but earn less than the salary threshold (and would become overtime protected).[82] The salary threshold would have to be considerably higher (at a salary level of approximately $1,015, approximately the 50th percentile level of full-time salaried workers) before the percentage of white collar workers who earn less than the threshold but pass the duties test would equal the percentage who are overtime eligible but earn at least the salary threshold.

The Department has also looked at the impact of the proposed salary level on these two groups of workers in low-wage (East South Central) and high-wage (Pacific) regions in addition to nationally.[83] For the East South Central region, the salary level at which the percentages of the two groups are about equal is approximately $914 per week, while in the Pacific region, the salary at which the percentages of the two groups are equal is approximately $1,154 per week. The Department's proposed salary level of the 40th percentile of weekly earnings of full-time salaried workers ($921 per week) falls appropriately within this range. This supports the Department's use of nationwide data to set a salary level that is appropriate for classifying workers as entitled to minimum wage and overtime pay or potentially exempt, and takes into account the impact on employers in low-wage regions.

Appropriateness. The standard salary level serves as a bright-line test for employers, intended to assist in identifying those workers with duties that may make them truly bona fide executive, administrative, or professional employees. As explained in the preceding analysis, the Department has determined that setting the proposed standard salary level at the 40th percentile of earnings for full-time salaried workers ($921) appropriately balances the tradeoff between denying the exemption for employees who are currently exempt and exposing workers who fail to meet the duties test to the risk of misclassification as exempt. In the absence of a long duties test which limits the amount of nonexempt work that can be performed, the Department believes a salary level at or above the proposed salary level appropriately distinguishes between overtime-protected and potentially exempt employees. Of employees currently

[82] Approximately 41 percent of white collar salaried workers who do not pass the duties test earn at least the proposed salary level ($921 per week). Conversely, approximately 25 percent of employees who pass the standard duties test (and 22 percent of employees who are currently exempt) earn less than the proposed salary level.

[83] Of the nine Census Region Divisions, the East South Central and Pacific divisions correspond to the divisions with the lowest and highest earnings using the Kantor method. The East South Central includes Alabama, Kentucky, Mississippi, and Tennessee. The Pacific includes Alaska, California, Hawaii, Oregon, and Washington.

exempt under the part 541 regulations, that is, those who are paid on a salary basis of at least $455 and meet the duties test, approximately 78 percent earn at least the proposed level of $921 per week. Conversely, among overtime-eligible white collar employees (both salaried and hourly), approximately 75 percent earn less than the proposed salary level.

Simplicity. The proposed method of basing the standard salary threshold on a particular percentile of weekly earnings for full-time salaried employees involves less estimation than previous updates, making it easier to implement, less prone to error, and more transparent than before. The proposed method reduces computation by simplifying the classification of workers to just two criteria: Wage or salaried, and full-time or part-time. Application of the Kantor method, in particular, would involve significant work to replicate since one would need to identify likely EAP exempt workers, a process which requires applying the standard duties test to determine the population of workers used in the earnings distribution. The proposed method is easier for stakeholders to replicate and understand because the standard duties test does not need to be applied to determine the population of workers used in the earnings distribution.

Consistency. A method that produces very different salary levels in consecutive years will reduce confidence that the salary levels in any given year are optimal. Since 2003, the 40th percentile of full-time salaried workers' weekly earnings has increased by an average of 2.6 percent annually. Similarly, the salary levels that would have been generated by the 2004 method increased 2.4 percent annually on average between 2003 and 2013. Conversely, since 2003 the salary levels that would have been generated by the Kantor method increased 3.6 percent on average annually. The larger growth rate for the Kantor method explains why despite the Kantor method and 2004 method generating very similar salary levels for the 2004 rulemaking, by 2013 these levels differ significantly (Kantor = $657; 2004 = $577). The primary reason the Kantor method generates a larger salary level than the 2004 method in 2013 is because the Kantor method uses the value of the current salary level test to identify the population of workers from which the earnings distribution is determined. Therefore, the Kantor method limits the pool of workers in the sample to those who meet the required salary level before evaluating the salaries of workers in low-wage regions and industries, while the 2004 method looks to all salaried workers in the South and retail industry but does not exclude workers with salaries below the current salary level. For example, in 2003 the Kantor method population of interest was limited to workers earning at least $155 per week (the 1975 long test salary level); in this proposed rule the Kantor method's population was restricted to workers earning at least $455 per week. Therefore the population considered in Kantor's method changes each time the salary level is changed. The Department's proposed method, like the 2004 method, considers all full-time salaried workers and does not limit the pool to only those workers who meet the current salary level test, thus avoiding this potential shortcoming of the Kantor method.

Based on the comparison of the characteristics of the methods reviewed in this section, the Department has determined that the proposed method, for the reasons identified, meets the objectives of appropriateness, simplicity, and consistency.

iv. Standard Salary Levels With Alternative Methodologies

When assessing the effects of the proposed standard salary level on the U.S. economy, the Department also evaluated several alternatives. This section presents the alternative salary levels considered and the bases for identifying those alternative levels. As shown in Table 13, the alternative salary levels evaluated are:

- Alternative 1: Calculate the salary level by adjusting the 2004 salary level of $455 for inflation from 2004 to 2013 as measured by the CPI–U. This results in a salary level of $561 per week.
- Alternative 2: Use the 2004 method to set the salary level at $577 per week.
- Alternative 3: Use the Kantor method to set the salary level at $657 per week.
- Alternative 4: Use the 50th earnings percentile of full-time hourly and salaried workers. This results in a salary level of $776 per week.
- Alternative 5: Adjust the salary level from the Kantor method to reflect the historical ratio between the long and short test salary levels. This results in a salary level of $979 per week.
- Alternative 6: Use the 50th earnings percentile of full-time salaried workers. This results in a salary level of $1,065 per week.
- Alternative 7: Adjust the 1975 short test salary level of $250 for inflation from 1975 to 2013. This results in a salary level of $1,083 per week.

TABLE 13—PROPOSED STANDARD SALARY LEVEL AND ALTERNATIVES, 2013

Alternative	Salary level (weekly/ annually)	Total increase [a]	
		$	%
Alternative #1: Inflate 2004 levels	$561/$29,178	106	23.3
Alternative #2: 2004 method	577/30,000	122	26.8
Alternative #3: Kantor method	657/34,176	202	44.4
Alternative #4: Median full-time hourly and salaried workers	776/40,352	321	70.5
Proposed (40th percentile full-time salaried)	921/47,892	466	102.4
Alternative #5: Kantor short test	979/50,922	524	115.2
Alternative #6: Median full-time salaried	1,065/55,380	610	134.1
Alternative #7: Inflate 1975 short test level	1,083/56,291	628	137.9

Note: Pooled data for 2011–2013.
[a] Average weekly change between proposed/alternative salary level and the salary level set in 2004 ($455 per week).

Alternatives 2 (2004 method) and 3 (Kantor method) were already discussed. Alternative 5 (Kantor short test) is also based on the Kantor method but, whereas alternative 3 generates the salary level associated with the long duties test, alternative 5 generates a level more closely resembling the salary associated with the short duties test. In the 2004 Final Rule, the Department replaced the structure of a short and a long duties test with a single standard

duties test based on the less restrictive short duties test, which had historically been paired with a higher salary level test. However, the Department set the standard salary level in 2004 at a level that was equivalent to the Kantor long test salary level, which was associated with the long duties test and limited the amount of nonexempt work that the employee could perform. In alternative 5, the Department therefore considered revising the standard salary level to approximate the short test salary that better matches the standard duties test. On average, the salary levels set in 1949 through 1975 were 149 percent higher for the short test than the long test. Therefore, the Department inflated the 2013 Kantor estimate of $657 by 149 percent, which generated a short salary level equivalent of $979.[84] While the Department used the average difference between the Kantor long and short tests for this alternative, the ratio of the short to long salary tests ranged from approximately 130 percent to 180 percent between 1949 and 2004. The low end of this range would result in a salary of $854; the high end would result in a salary of $1,183.

Alternatives 1 (inflating the 2004 level) and 7 (inflating the 1975 short test level) use similar approaches to each other. Both begin with an exemption salary level set in an earlier rulemaking, and use the CPI–U to adjust that salary level to account for inflation between the year it was set and 2013. Where the two approaches differ is in the selection of the starting point. Alternative 1 assumes the 2004 standard salary level was set at an appropriate level, and that changes in earnings since that time can be reflected well by changes in prices. Alternative 1 is inappropriate because the salary level set in 2004 does not fully account for changes in the sample and the change from long and short duties tests to a single standard test that is comparable to the old short duties test. Alternative 7 assumes that the 1975 salary levels were set to a more appropriate level than the 2004 levels; inflating the 1975 short duties test salary level to 2013 results in a salary level of $1,083 per week. This alternative is inappropriate because it is based on interim salary rates. 40 FR 7091. Additionally, the Department thinks the salary level generated with this method is too high in light of the fact that there no longer is a long duties test with an associated lower salary level that employers may use to claim that employees are exempt.

Alternatives 4 and 6 set the standard salary equal to the 50th percentile, or median, of weekly earnings for two groups of workers: full-time hourly and salaried workers and full-time salaried workers, respectively. These approaches are similar to the proposed method in that they set the salary level equal to a percentile of an earnings distribution. The 50th earnings percentile of all full-time hourly and salaried workers results in a salary level of $776. The Department concluded, however, that it would not be appropriate to include the wages of hourly workers in setting the EAP salary threshold and that the resulting salary level was too low to work effectively with the standard duties test. Selecting the 50th earnings percentile of full-time salaried workers results in a standard salary level of $1,065, which is only $18 per week less than alternative 7. Like alternative 7, the Department believes that the salary level generated with this method is too high because there is no longer a long duties test with an associated lower salary level that employers may use to claim that employees are exempt.

Section VII.D. will detail the transfers, costs, and benefits of the proposed salary levels and alternatives. A comparison of the costs and benefits justifies the Department's decision to propose a standard salary level of the 40th percentile of weekly earnings for all full-time salaried workers ($921 per week).

v. Proposed Methodology for the HCE Total Annual Compensation Level

The Department proposes to set the HCE compensation level equal to the annual equivalent of the 90th percentile of the distribution of earnings for all full-time salaried workers. BLS calculated the salary level from the CPS MORG data by limiting the population to non-hourly workers who work full-time (*i.e.,* at least 35 hours per week) and determining the 90th percentile of the resulting weighted weekly earnings distribution. The 90th percentile of weekly earnings ($2,349) was then multiplied by 52 to determine the annual earnings equivalent ($122,148). This mirrors the method used to set the standard salary level but uses a percentile towards the top of the earnings distribution to reflect the minimal duties criteria associated with the highly compensated exemption.

The Department also evaluated the following alternative HCE compensation levels:

- HCE alternative 1: Leave the HCE compensation level unchanged at $100,000 per year.
- HCE alternative 2: Set the HCE compensation level at $150,000 per year, which is approximately the annualized level of weekly earnings exceeded by 6.3 percent of full-time salaried workers. This is the same percent of such workers that exceeded the HCE compensation level in 2004.

The Department concluded that HCE alternative 1 was inappropriate because leaving the HCE compensation level unchanged at $100,000 per year would ignore more than 10 years of wage growth. In 2013, approximately 17 percent of full-time salaried workers earned at least $100,000 annually, more than twice the share who earned that amount in 2004. Conversely, HCE alternative 2 would set the annual compensation level at $150,000.[85] The Department believes this salary level would be too high to provide a meaningful alternative test for exemption. Thus, the Department believes its proposal to adjust the HCE total annual compensation to reflect the 90th percentile of earnings of full-time salaried workers strikes the appropriate balance.

D. Impacts of Revised Salary and Compensation Level Test Values

i. Overview

Impacts due to the proposed increases in the EAP salary levels will depend on how employers respond. Employer response is expected to vary by the characteristics of the affected EAP workers. For workers who usually work 40 hours a week or less, the Department assumes that employers will reclassify these workers as overtime-eligible and will pay the same weekly earnings for the same number of hours worked. While these employees will become overtime eligible, employers can continue to pay their current salaries and need make no adjustments as long as the employees' hours do not exceed 40 hours in a workweek.[86] For employees who work overtime, employers may: (1) Pay the required overtime premium for the current number of overtime hours based upon the current implicit regular rate of pay;

[84] The Department estimated the average historic ratio of 149 percent as the simple average of the fifteen historical ratios of the short duties salary level to the long duties salary level (salary levels were set in 5 years and in each year the salary level varied between the three exemptions: executive, administrative, and professional). If the Department had weighted the average ratio based on the length of time the historic salary levels were in effect, this would have yielded an average historic ratio of 152 percent and a salary level of $999.

[85] This compensation level corresponds to the annual value of the highest weekly earnings reported in the CPS MORG public-use data.

[86] Assuming the worker earns the minimum wage. Otherwise, wages and hours will be adjusted to reflect compliance with minimum wage requirements.

(2) reduce the regular rate of pay so total weekly earnings and hours do not change after overtime is paid; (3) eliminate overtime hours; (4) increase employees' salaries to the proposed salary level; or (5) use some combination of these responses. Transfers from employers to employees, direct employer costs, and DWL depend on how employers respond to the proposed rulemaking.

The cost, benefit and transfer estimates appearing throughout this section represent nationwide aggregates. Given the potential for this proposed rule to have impacts that differ by region or industry, the Department invites detailed comment, data and analysis that would allow for estimation of impacts on a regional or industry basis.

ii. Summary of Quantified Impacts

Table 14 presents the aggregated projected costs, transfers, and DWL associated with increasing the standard EAP salary level from $455 per week to the 40th earnings percentile, $921 per week, and the HCE compensation level from $100,000 to the 90th earnings percentile, $122,148 annually (without automatic updating). The Department estimated that the direct employer costs of this proposal will total $592.7 million in the first year, with average annualized direct costs of $194.2 million per year over 10 years. In addition to the direct costs, this proposed rulemaking would also transfer income from employers to employees. Year 1 transfers would equal $1,482.5 million, with average annualized transfers estimated at $872.9 million per year over 10 years. Finally, the 10-year average annualized DWL was estimated to be $7.2 million.

In order to increase the sample size and the reliability and granularity of results in this analysis, the Department used three years (2011–2013) of CPS MORG data to represent the 2013 labor market. Monetary values in 2011 and 2012 were inflated to 2013 dollars and the sample was reweighted to reflect the population of potentially affected workers in 2013. The potential employer costs due to reduced profits and additional hiring were not quantified but are discussed in section VII.D.iv.5.

TABLE 14—SUMMARY OF REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS, WITHOUT AUTOMATIC UPDATING

(millions 2013$)

Cost/Transfer [a]	Year 1	Future years [b]		Average annualized value	
		Year 2	Year 10	3% Real rate	7% Real rate
Direct Employer Costs:					
Regulatory familiarization	$254.5	$0.0	$0.0	$29.0	$33.9
Adjustment	160.1	1.1	0.1	18.4	21.5
Managerial	178.1	169.0	93.1	135.9	138.9
Total direct costs [c]	592.7	170.0	93.1	183.2	194.2
Transfers from Employers to Workers [d]					
Due to minimum wage	46.7	44.0	9.9	27.9	29.3
Due to overtime pay	1,435.8	1,017.1	490.2	815.7	843.6
Total transfers [d]	1,482.5	1,061.2	500.1	843.6	872.9
DWL [e]	.....	.....	.....	.....	.....
DWL	7.4	9.8	4.3	7.0	7.2

[a] Additional costs and benefits of the rule that could not be quantified or monetized are discussed in the text.
[b] These costs/transfers represent a range over the nine-year span.
[c] Components may not add to total due to rounding.
[d] This is the net transfer from employers to workers. There may also be transfers of hours and income from some workers to others.
[e] DWL was estimated based on the aggregate impact of both the minimum wage and overtime pay provisions. Since the transfer associated with the minimum wage is negligible compared to the transfer associated with overtime pay, the vast majority of this cost is attributed to the overtime pay provision.

iii. Affected EAP Workers

1. Overview

Costs, transfer payments, DWL, and benefits of this proposed rulemaking depend on the number of affected EAP workers and labor market adjustments made by employers. The Department estimated there were 21.4 million potentially affected EAP workers, that is EAP workers who either (1) passed the salary basis test, the standard salary level test, and the standard duties test, or (2) passed the salary basis test, passed the standard salary level test, the HCE total compensation level test, and the HCE duties test. This number excludes workers in named occupations who are not subject to the salary tests or who qualify for another (non-EAP) exemption.

The Department estimated that increasing the standard salary level from $455 per week to the 40th earnings percentile of all full-time salaried workers ($921 per week) would directly affect 4.6 million workers (*i.e.,* the number of potentially affected workers who earn at least $455 per week but less than $921 per week). These affected workers compose 21.7 percent of potentially affected EAP workers. The Department also estimated that 36,000 workers would be directly affected by an increase in the HCE compensation level from $100,000 to the 90th earnings percentile (the number of potentially affected workers who earn between $100,000 and $122,148 annually and pass the minimal duties test but not the standard duties test; about 0.2 percent of the pool of potentially affected EAP workers).

Table 15 presents the number of affected EAP workers, the mean number of overtime hours they work per week, and their average weekly earnings. The 4.6 million workers affected by the increase in the standard salary level average 1.6 hours of overtime per week and earn an average of $731 per week.

The average number of overtime hours is low because most of these workers (3.7 million) do not usually work overtime.[87] However, the estimated 988,000 affected workers who regularly work overtime average 11.1 hours of overtime per week. The 36,000 EAP workers affected by the proposed change in the HCE annual compensation level average 5.8 hours of overtime per week and earn an average of $2,103 per week.

Although most affected EAP workers who typically do not work overtime might experience little or no change in their daily work routine, those who regularly work overtime may experience significant changes. The Department expects that workers who routinely work some overtime or who earn less than the minimum wage are most likely to be tangibly impacted by the revised salary level.[88] Employers might respond by: converting such employees to overtime eligible, paying at least the minimum wage, and paying the overtime premium; reducing overtime hours; reducing workers' regular wage rates (where the rate exceeds the minimum wage); increasing the employees' salary to the proposed salary level; or use some combination of these responses.

TABLE 15—NUMBER OF AFFECTED EAP WORKERS, MEAN OVERTIME HOURS, AND MEAN WEEKLY EARNINGS, 2013

Type of affected EAP worker	Affected EAP workers[a]		Mean overtime hours	Mean usual weekly earnings
	Number (1,000s)	% of total		
Standard Salary Level				
All affected EAP workers	4,646	100	1.6	$731
Earn less than the minimum wage[b]	12	0.3	36.4	529
Regularly work overtime	988	21.3	11.1	743
Occasionally work overtime[c]	180	3.9	8.0	729
HCE Compensation Level				
All affected EAP workers	36.2	100	5.8	2,103
Earn less than the minimum wage[b]				
Regularly work overtime	14.5	40.1	14.3	2,119
Occasionally work overtime[c]	1.0	2.6	6.5	2,120

Note: Pooled data for 2011–2013.

[a] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the proposed salary levels (if their weekly earnings do not increase to the proposed salary levels).

[b] The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage. HCE workers will not be impacted by the minimum wage provision.

[c] Workers who do not usually work overtime but did in the survey week. Mean overtime hours are actual overtime hours in the survey week.

The Department considered two types of overtime workers in this analysis: regular overtime workers and occasional overtime workers.[89] Regular overtime workers typically worked more than 40 hours per week. Occasional overtime workers typically worked 40 hours or less per week, but they worked more than 40 hours in the week they were surveyed. The Department considers these two populations separately in the analysis because labor market responses to overtime pay requirements may differ for these two types of workers.

An estimated 181,000 occasional overtime workers will be affected by either the standard salary level or the HCE total annual compensation level increase in any given week (3.9 percent of all affected EAP workers). They averaged 8.0 hours of overtime per week. This group represents the number of workers with occasional overtime hours in the week the CPS MORG survey was conducted. In other weeks, these specific individuals may not work overtime but other workers, who did not work overtime in the survey week, may work overtime. Because the survey week is a representative week, the Department believes the prevalence of occasional overtime in the survey week, and the characteristics of these workers, is representative of other weeks (even though a different group of workers would be identified as occasional overtime workers in a different week).[90]

2. Characteristics of Affected EAP Workers

In this section the Department examines the characteristics of affected EAP workers. Table 16 presents the distribution of affected workers across industries, occupations, and MSA status. The industry with the largest number of affected EAP workers was education and health services (1.0 million). The management, business, and financial occupation category accounted for the most affected EAP workers by occupation (2.1 million). A substantial majority of affected EAP workers resided in MSAs (4.1 million). Employers in non-MSAs and low-wage industries may perceive a greater impact due to the lower wages and salaries typically paid in those areas and industries. However, because the vast majority of potentially affected workers reside in MSAs and do not work in low-wage industries, the Department believes that the proposed salary level is appropriate.

[87] That is, workers who report they usually work 40 hours or less per week (identified with variable PEHRUSL1 in CPS MORG).

[88] A small proportion (0.3 percent) of affected EAP workers earns implicit hourly wages that are less than the applicable minimum wage (the higher of the state or federal minimum wage). The implicit hourly wage is calculated as an affected EAP employee's total weekly earnings divided by total weekly hours worked.

[89] Regular overtime workers were identified in the CPS MORG with variable PEHRUSL1. Occasional overtime workers were identified in the CPS MORG with variables PEHRUSL1 and PEHRACT1.

[90] The Department can estimate the average number of occasional overtime workers in any given week but cannot estimate the total number of individuals working occasional overtime in the year since the Department does not know how many weeks in a year a specific worker works overtime.

TABLE 16—ESTIMATED NUMBER OF EXEMPT WORKERS WITH THE CURRENT AND PROPOSED SALARY LEVELS, BY INDUSTRY, OCCUPATION, AND MSA STATUS, 2013

Industry, occupation, and MSA status	Potentially affected EAP workers (millions) [a]		
	At current salary levels	With updated standard and HCE levels	
		Number [b]	Reduction (affected workers) [c]
Total	21.38	16.70	4.68
By Industry			
Agriculture, forestry, fishing, & hunting	0.03	0.03	0.01
Mining	0.18	0.16	0.02
Construction	0.76	0.61	0.16
Manufacturing	3.27	2.86	0.41
Wholesale & retail trade	2.42	1.76	0.66
Transportation & utilities	0.80	0.64	0.16
Information	0.90	0.71	0.18
Financial activities	3.30	2.61	0.68
Professional & business services	4.20	3.46	0.73
Education & health services	3.41	2.41	0.99
Leisure & hospitality	0.75	0.49	0.26
Other services	0.55	0.36	0.18
Public administration	0.83	0.59	0.24
By Occupation			
Management, business, & financial	10.79	8.69	2.10
Professional & related	7.04	5.63	1.40
Services	0.19	0.11	0.08
Sales & related	2.19	1.57	0.62
Office & administrative support	0.97	0.53	0.44
Farming, fishing, & forestry	0.00	0.00	0.00
Construction & extraction	0.02	0.02	0.01
Installation, maintenance, & repair	0.05	0.04	0.01
Production	0.10	0.08	0.02
Transportation & material moving	0.04	0.03	0.01
By MSA Status			
MSA	19.67	15.53	4.14
Non-MSA	1.62	1.11	0.52
Not identified	0.09	0.06	0.02

Note: Pooled data for 2011–2013.
[a] Workers who are white collar, salaried, not eligible for another (non-EAP) overtime exemption, and not in a named occupation.
[b] Workers who continue to be exempt after the proposed increases in the salary levels (assuming affected workers' weekly earnings do not increase to the proposed salary level).
[c] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the proposed salary levels (if their weekly earnings do not increase to the proposed salary levels).

iv. Costs

1. Summary

Three direct costs to employers were quantified in this analysis: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Regulatory familiarization costs are costs to learn about the change in the regulation and only occur in Year 1. Adjustment costs are costs incurred by firms to determine workers' exemption statuses, notify employees of policy changes, and update payroll systems. Managerial costs associated with this proposed rulemaking occur because employers may spend more time scheduling newly nonexempt employees and more closely monitor their hours to minimize or avoid paying the overtime premium.

The Department estimated costs in Year 1 assuming the first year of the analysis was 2013. The Department estimated that in Year 1 regulatory familiarization costs would equal $254.5 million, Year 1 adjustment costs would sum to $160.1 million, and Year 1 managerial costs would total $178.1 million (Table 17). Total direct employer costs in Year 1 were estimated to equal $592.7 million. Adjustment costs and management costs are ongoing and will need to be projected for future years (section VII.D.x.).

Costs that are not quantified are discussed in section VII.D.iv.5. Adjustment costs and managerial costs associated with automatically updating the standard salary level are discussed in section VII.E.iii.

TABLE 17—SUMMARY OF YEAR 1 DIRECT EMPLOYER COSTS OF THIS PROPOSED RULE (MILLIONS)

Direct employer costs	Standard salary level	HCE Compensation level	Total
Regulatory familiarization [a]	.....	.....	$254.5
Adjustment	158.8	$1.2	160.1
Managerial	176.0	2.1	178.1
Total direct costs	334.8	3.3	592.7

[a] Regulatory familiarization costs are assessed jointly for the change in the standard salary level and the HCE compensation level.

2. Regulatory Familiarization Costs

A change in the standard EAP weekly salary test to the proposed level would impose direct costs on businesses by requiring them to review the regulation. It is not clear whether regulatory familiarization costs are a function of the number of establishments or the number of firms. The Department believes that generally the headquarters of a firm will conduct the regulatory review for the entire company; however, some firms provide more autonomy to their establishments, and in such cases regulatory familiarization may occur at the establishment level. To be conservative, the Department uses the number of establishments in its cost estimate because this provides a larger cost estimate.

The Department believes that all establishments will incur regulatory familiarization costs, even if they do not employ exempt workers, because all establishments will need to confirm whether this proposed rulemaking includes any provisions that may impact their workers. Firms with more affected EAP workers will likely spend more time reviewing the regulation than firms with fewer or no affected EAP workers (since a careful reading of the regulations will probably follow the initial decision that the firm is affected). However, the Department does not know the distribution of affected EAP workers across firms and so an average cost per establishment is used.

No data were identified from which to estimate the amount of time required to review the regulation. The Department requests that commenters provide data if possible. For this NPRM, the Department estimated establishments will use on average one hour of time because the proposed regulation is narrowly focused on the salary level tests.

To estimate the total regulatory familiarization costs, three pieces of information must be estimated: (1) A wage level for the employees reviewing the rule; (2) the number of hours each employee spends reviewing the rule; and (3) the number of establishments employing workers. The Department's analysis assumed that mid-level human resource workers with a median wage of $23.63 per hour will review the proposed rule.[91] Assuming benefits are paid at a rate of 45 percent of the base wage and one hour of time is required for regulatory familiarization, the average cost per establishment is $34.19.[92] The number of establishments with paid employees in 2011 was 7.44 million.[93]

Regulatory familiarization costs in Year 1 were estimated to be $254.5 million ($34.19 per establishment × 1 hour × 7.44 million establishments).[94] In future years, new firms will be formed and may incur regulatory familiarization costs. However, the Department believes the incremental cost of this regulation will be zero since new firms will only need to familiarize themselves with the updated law, instead of the old law.

3. Adjustment Costs

A change in the EAP salary test to the proposed level will impose direct costs on firms by requiring them to re-determine the exemption status of employees, update and adapt overtime policies, notify employees of policy changes, and adjust their payroll systems. The Department believes the size of these costs will depend on the number of affected EAP workers and will occur in any year when the salary level is raised and exemption status is changed for some workers. To estimate adjustment costs three pieces of information must be estimated: (1) A wage level for the employees making the adjustments; (2) the amount of time spent making the adjustments; and (3) the estimated number of newly affected EAP workers. The Department again estimated that the average wage with benefits for human resources, training, and labor relations specialists is $34.19 per hour (as explained above). No applicable data were identified from which to estimate the amount of time required to make these adjustments.[95] The Department requests that commenters provide any applicable data. For this NPRM, the Department chose to use one hour of time per affected worker. The estimated number of affected EAP workers in Year 1 is 4.682 million (as discussed in section VII.D.iii.). Therefore, total Year 1 adjustment costs were estimated to equal $160.1 million ($34.19 × 1 hour × 4.682 million workers).

Adjustment costs may be partially offset by a reduction in the cost to employers of determining employees' exempt status. Currently, to determine whether an employee is exempt firms must apply the duties test to salaried workers who earn at least $455 per week. Following this rulemaking, firms will no longer be required to apply the potentially time consuming duties test to employees earning less than the proposed salary level. This will be a clear cost savings to employers for employees who do not pass the duties test and earn at least $455 per week but less than the proposed salary level. The Department did not estimate the potential size of this cost savings.

[91] Calculated as the median wage in the CPS for workers with the occupation ''human resources, training, and labor relations specialists'' (0620) in 2013. The Department determined this occupation includes most of the workers who would conduct these tasks. Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2014–15 Edition, Human Resources Specialists and Labor Relations Specialists, available at: *http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm*.

[92] The benefits-earnings ratio is derived from the BLS's Employer Costs for Employee Compensation (ECEC) data.

[93] Data for 2011 was the most recent available at the time of writing. Survey of U.S. Businesses 2011. Available at: *https://www.census.gov/econ/susb/*. Also included in the number of establishments incurring regulatory familiarization costs are the 90,106 state and local governments reported in the 2012 Census of Governments: Employment Summary Report. Available at: *http://www2.census.gov/govs/cog/g12_org.pdf*.

[94] As previously noted, the Department chose to use the number of establishments rather than the number of firms to provide a more conservative estimate of the regulatory familiarization cost. Using the number of firms, 5.8 million, would result in a reduced regulatory familiarization cost estimate of $197.4 million in Year 1.

[95] Costs in the 2004 Final Rule were considered but because that revision included changes to the duties test the cost estimates are not directly applicable.

4. Managerial Costs

If employers reclassify employees as overtime eligible due to the changes in the salary levels, then firms may incur ongoing managerial costs associated with this proposed rulemaking because the employer may schedule and more closely monitor an employee's hours to minimize or avoid paying the overtime premium. These costs are in addition to the one-time regulatory familiarization and adjustment costs described above. For example, when scheduling hours the manager may have to assess whether the marginal benefit of scheduling the worker for more than 40 hours exceeds the marginal cost of paying the overtime premium. Additionally, the manager may have to spend more time monitoring the employee's work and productivity since the marginal cost of employing the worker per hour has increased.

Because there was little precedent or data to aid in evaluating these costs, the Department examined several sources to estimate costs. First, prior part 541 rulemakings were reviewed to determine whether managerial costs were estimated. No estimates were found. This cost was not quantified for the 2004 rulemaking. Second, a literature review was conducted in an effort to identify information to help guide the cost estimates; again, no estimates were found. The Department requests data from the public applicable to this cost estimate. Despite a lack of available data, the Department chose to include estimated managerial costs to produce as full and accurate a cost estimate to employers as possible.

To provide a sense of the potential magnitude of these costs, the Department estimated these costs assuming that management spends an additional five minutes per week scheduling and monitoring each affected worker expected to be reclassified as overtime eligible as a result of this NPRM, and whose hours are adjusted (1,022,000 affected EAP workers as calculated in section VII.D.vi.). As will be discussed in detail below, most affected workers do not currently work overtime, and there is no reason to expect their hours worked to change when their status changes from exempt to nonexempt. Similarly, employers are likely to find that it is less costly to give some workers a raise in order to maintain their exempt status. For both these groups of workers, management will have little or no need to increase their monitoring of hours worked. Under these assumptions, the additional managerial hours worked per week were estimated to be 85,200 hours rounded ((5 minutes/60 minutes) × 1,022,000 workers).

The median hourly wage in 2013 for a manager was $27.78 and benefits were paid at a rate of 45 percent of the base wage, which totaled $40.20 per hour.[96] [97] Multiplying the additional 85,200 weekly managerial hours by the hourly wage of $40.20 and 52 weeks per year, the Year 1 costs were estimated to total $178.1 million for the proposed standard salary level. Although the exact magnitude would vary with the number of affected EAP workers each year, these costs would be incurred annually.

5. Other Potential Costs

In addition to the costs discussed above, there may be additional costs that have not been quantified. Other categories of unquantified costs are discussed in section VII.D.vii and immediately below.

Reduced Profits

The increase in worker earnings' resulting from the revised salary level is a transfer of income from firms to workers, not a cost, and is thus neutral concerning its primary effect on welfare and gross domestic product (GDP). However, there are potential secondary effects (both costs and benefits) of the transfer due to the potential difference in the marginal utility of income and the marginal propensity to consume between workers and business owners. The transfer may result in societal gain during periods when the economy is operating below potential to the extent that transferring income to workers with a relatively high marginal propensity to consume results in a larger multiplier effect and impact on GDP. Conversely, this transfer may also reduce the profits available to firms for business investment.

Hiring Costs

One of Congress' goals in enacting the FLSA in 1938 was to spread employment to a greater number of workers by effectively raising the wages of employees working more than 40 hours per week. To the extent that firms respond to an update to the salary level test by reducing overtime, they may do so by spreading hours to other workers, including: Current workers employed for less than 40 hours per week by that employer, current workers who retain their exempt status, and newly hired workers. If new workers are hired to absorb these transferred hours, then the associated hiring costs are a cost of this proposed rulemaking. The reduction in hours is considered in more detail in section VII.D.v.

v. Transfers

1. Overview

Transfer payments occur when income is redistributed from one party to another. The Department has quantified two possible transfers likely to result from this proposed update to the salary level tests: (1) Transfers to employees from employers to ensure compliance with the FLSA minimum wage provision; and (2) transfers to employees from employers to ensure compliance with the FLSA overtime pay provision. Transfers in Year 1 to workers from employers due to the minimum wage provision were estimated to equal $46.7 million. The proposed increase in the HCE exemption compensation level does not affect minimum wage transfers because workers eligible for the HCE exemption earn well above the minimum wage. Transfers to employees from employers due to the overtime pay provision were estimated to be $1,435.8 million, $1,394.2 million of which is from the increased standard salary level, while the remainder is attributable to the increased HCE compensation level. Total Year 1 transfers were estimated to be $1,482.5 million (Table 18).

TABLE 18—SUMMARY OF YEAR 1 REGULATORY TRANSFERS

(Millions)

Transfer from employers to workers	Standard salary level	HCE Compensation level	Total
Due to minimum wage	$46.7	$0.0	$46.7

[96] Calculated as the median wage in the CPS for workers in management occupations (excluding chief executives) in 2013.

[97] The adjustment ratio is derived from the BLS's Employer Costs for Employee Compensation (ECEC) data using variables CMU1020000000000D and CMU1030000000000D.

TABLE 18—SUMMARY OF YEAR 1 REGULATORY TRANSFERS—Continued

(Millions)

Transfer from employers to workers	Standard salary level	HCE Compensation level	Total
Due to overtime pay	1,394.2	41.7	1,435.8
Total transfers	1,440.8	41.7	1,482.5

Because the overtime premium depends on the base wage, the estimates of minimum wage transfers and overtime transfers are linked. This can be considered a two-step approach. The Department first identified affected EAP workers with an implicit regular hourly wage lower than the minimum wage, and then calculated the wage increase necessary to reach the minimum wage. The implicit regular rate of pay is calculated as usual weekly earnings divided by usual weekly hours worked. For those employees whose implicit regular rate of pay is below the minimum wage, the overtime premium was based on the minimum wage as the regular rate of pay.

2. Transfers Due to the Minimum Wage Provision

Transfers from employers to workers to ensure compliance with the federal minimum wage are small compared to the transfers attributed to overtime pay and are only associated with the change in the standard salary level (workers currently eligible for the HCE test earn well above the minimum wage). For purposes of this analysis, the hourly rate of pay is calculated as usual weekly earnings divided by usual weekly hours worked. In addition to earning low wages, this set of workers earns an hourly rate below the federal minimum wage and also works many hours per week. To demonstrate, in order to earn less than the federal minimum wage of $7.25 per hour, but at least $455 per week, these workers must regularly work significant amounts of overtime (since $455/$7.25 = 62.8 hours). The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage. Most affected EAP workers already receive at least the minimum wage; an estimated 12,000 affected EAP workers (less than 0.3 percent of all affected EAP workers) currently earn an implicit hourly rate of pay less than the minimum wage. The Department estimated transfers due to payment of the minimum wage by calculating the change in earnings if wages rose to the minimum wage for workers who become nonexempt and thus would have to be paid the minimum wage.[98]

In response to an increase in the regular rate of pay to the minimum wage, employers may reduce the workers' hours, which must be considered when estimating transfers attributed to payment of the minimum wage to newly overtime-eligible workers. In theory, because the quantity of labor hours demanded is inversely related to wages, a higher mandated wage could result in fewer hours of labor demanded. However, the weight of the empirical evidence finds that increases in the minimum wage have caused little or no significant job loss.[99] Thus, in the case of this proposed regulation, the Department believes that any disemployment effect due to the effect of the minimum wage provision would be negligible. This is partially due to the small number of workers affected by this provision. The Department estimated the potential disemployment effects (*i.e.*, the estimated reduction in hours) of the transfer attributed to the minimum wage by multiplying the percent change in the regular rate of pay by a labor demand elasticity of −0.075.[100]

At the proposed salary level ($921 per week), the Department estimated that 12,000 affected EAP workers will on average see an hourly wage increase of $0.98, work 1.0 fewer hour per week, and receive an increase in weekly earnings of $74.0 as a result of coverage by the minimum wage provisions (Table 19). Thus, the total change in weekly earnings due to the payment of the minimum wage was estimated to be $897,300 per week ($74.0 × 12,000) or $46.7 million in Year 1.

TABLE 19—MINIMUM WAGE ONLY: MEAN HOURLY WAGES, USUAL OVERTIME HOURS, AND WEEKLY EARNINGS FOR AFFECTED EAP WORKERS, 2013

	Hourly wage [a]	Usual weekly hours	Usual weekly earnings	Total weekly transfer (1,000s) [b]
Before proposed regulation	$7.09	76.4	$529.1	—
After proposed regulation	8.07	75.4	603.1	—
Change	0.98	−1.0	74.0	$897.3

Note: Pooled data for 2011–2013.

[a] The applicable minimum wage is the higher of the federal minimum wage and the state minimum wage.

[b] Usual weekly earnings multiplied by the 12,000 exempt workers with an implicit regular rate of pay below the minimum wage who would lose their exemption status under the proposed rulemaking if weekly earnings did not change.

[98] Because these workers' hourly wages will be set at the minimum wage after the proposed rule, their employers will not be able to adjust their wages downward to offset part of the cost of paying the overtime pay premium (which will be discussed in the following section). Therefore, these workers will generally receive larger transfers attributed to the overtime pay provision than other workers.

[99] Belman, D., and P.J. Wolfson (2014). What Does the Minimum Wage Do? Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. Dube, A., T.W. Lester, and M. Reich. (2010). Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties. IRLE Working Paper No. 157–07. *http://irle.berkeley.edu/workingpapers/157-07.pdf.* Schmitt, J. (2013). Why Does the Minimum Wage Have No Discernible Effect on Employment? Center for Economic and Policy Research.

[100] This is based on the estimated impact of a change in the minimum wage from $7.25 to $9.00 per hour on the employment of teenagers from Congressional Budget Office. (2014). The Effects of a Minimum-Wage Increase on Employment and Family Income. While an elasticity estimate for adult workers would be more appropriate, the report stated that the elasticity for adults was ''about one-third of the elasticity'' for teenagers, without providing a specific value. In addition, the literature for adults is more limited.

3. Transfers Due to the Overtime Pay Provision

The proposed rule will also transfer income to affected EAP workers working in excess of 40 hours per week through payment of overtime to workers earning between the current and proposed salary levels. The size of the transfers will depend largely on how employers respond to the proposed salary level for affected EAP workers who work overtime. Employers may respond by: (1) Paying the required overtime premium to affected workers for the same number of overtime hours at the same implicit regular rate of pay; (2) reducing the regular rate of pay for workers working overtime; (3) eliminating overtime hours and potentially transferring some of these hours to other workers; (4) increasing workers' salary to the proposed salary level; or (5) using some combination of these responses. How employers will respond depends on the relative costs of each of these alternatives; in turn, the relative costs of each of these alternatives are a function of workers' earnings and hours worked.

The simplest approach to estimating these transfer payments would be to multiply an employee's regular rate of pay (after compliance with the minimum wage) by 1.5 for all overtime hours; this is referred to as the ''full overtime premium'' model.[101] However, due to expected wage and hour adjustments by employers, this would likely overestimate the size of the transfer. Therefore, the Department used a methodology that allows for employer adjustments, such as changes in the regular rate of pay or hours worked. The size of these adjustments is likely to vary depending on the affected worker's salary and work patterns.

Employer Adjustments to the Regular Rate of Pay

This section focuses on evaluating employers' responses to affected EAP workers who work regular overtime (usually work more than 40 hours in a week). The requirement that employers pay newly nonexempt employees in accordance with minimum wage and overtime requirements may result in changes in employment conditions; requiring an overtime premium increases the marginal cost of labor, which employers will likely try to offset by adjusting wages or hours. How employers respond to a new salary level and the ensuing changes in employment conditions will depend on the demand for labor, current wages, employer and employee bargaining power, and other factors. To model employer responses, the Department used a method that reflects the average response among all employers for all affected workers. However, individual employer responses will vary.

Two conceptual models are useful for thinking about how employers may respond to reclassifying certain employees as overtime eligible: The ''full overtime premium'' model and the ''employment contract'' model.[102] These models make different assumptions about the demand for overtime hours and the structure of the employment agreement which result in different implications for predicting employer responses.

The full overtime premium model is based on the traditional ''labor demand'' model of determining wage and hour conditions. In the labor demand model, employers and employees negotiate fixed hourly wages and then subsequently negotiate hours worked, rather than determining both hours and pay simultaneously. This model assumes employees are aware of the hourly wage rate they negotiated and may be more reluctant to accept downward adjustments. The labor demand model would apply if employees had a contract to be paid at an hourly rate, meaning that employers could not reduce the regular rate of pay in response to the requirement to pay a 50 percent premium on hours worked beyond 40 in a week. However, the increase in the cost of labor would lead to a reduction in the hours of labor demanded as long as labor demand is not completely inelastic. The full overtime premium model is a particular scenario of the labor demand model in which the demand for labor is completely inelastic, that is employers will demand the same number of hours worked regardless of the cost.

In the employment contract model, employers and employees negotiate total pay and hours simultaneously, rather than negotiating a fixed hourly wage and then determining hours. Under this model, when employers are required to pay employees an overtime premium, they adjust the employees' implicit hourly rate of pay downward so that when the overtime premium is paid total employee earnings (and thus total employer cost) remain constant, along with the employees' hours. The employer does not experience a change in cost and the employee does not experience a change in earnings or hours. The employment contract model would hold if the workers who are reclassified as overtime protected had an employment agreement specifying set total earnings and hours of work.

The employment contract model tends to be more applicable to salaried workers while the labor demand model is generally more applicable to workers paid hourly. Since all affected EAP workers in this analysis are salaried, the Department believes the employment contract model may be more appropriate for estimating employer response to the proposed salary increase. However, the employment contract model may not always hold true due to market constraints, employer incentives, or workers' bargaining power. Four examples are provided.

- Employers are constrained because they cannot reduce an employee's implicit hourly rate of pay below the minimum wage. If the employee's implicit hourly rate of pay before the change is at or below the minimum wage, then employers will not be able to reduce the rate of pay to offset the cost of paying the overtime premium.
- Employees generally have some, albeit limited, bargaining power which may prevent employers from reducing the employee's implicit hourly rate of pay to fully offset increased costs.
- Employers may be hesitant to reduce the employee's implicit hourly rate of pay by the entire amount predicted by the employment contract model because it may hurt employee morale and consequently productivity.
- Employers are often limited in their ability to pay different regular rates of pay to different employees who perform the same work and have the same qualifications. In order to keep wages constant across employees and reduce wages for overtime workers, employers would need to reduce the implicit hourly rate of pay for employees who do not work overtime as well as those who do work overtime. This would reduce total earnings for these non-overtime employees (potentially causing retention problems, productivity losses, and morale concerns).

Therefore, the likely outcome will fall somewhere between the conditions predicted by the full overtime premium and employment contract models. For

[101] The implicit regular rate of pay is calculated as usual weekly earnings divided by usual weekly hours worked. For example, the regular rate of pay for an employee previously ineligible for overtime whose usual weekly earnings was $600 and usual weekly hours was 50 would be $12. Under the full overtime premium model, this employee would receive $660 (40 hours × $12) + (10 hours × $12 × 1.5).

[102] The employment contract model is also known as the fixed-job model. *See* Trejo, S.J. (1991). The Effects of Overtime Pay Regulation on Worker Compensation. *American Economic Review,* 81(4), 719–740 and Barkume, A. (2010). The Structure of Labor Costs with Overtime Work in U.S. Jobs. *Industrial and Labor Relations Review,* 64(1), 128–142.

example, the implicit hourly rate of pay may fall, but not all the way to the wage predicted by the employment contract model, and overtime hours may fall but not be eliminated since the implicit hourly rate of pay has fallen. The Department conducted a literature review to evaluate how the market would adjust to a change in the requirement to pay overtime.

Barkume (2010) and Trejo (1991) empirically tested for evidence of these two competing models by measuring labor market responses to the application of FLSA overtime pay regulations.[103] Both concluded that wages partially adjust toward the level consistent with the employment contract model in response to the overtime pay provision.[104] Barkume found that employee wage rates were adjusted downward by 40 to 80 percent of the amount the employment contract model predicted, depending on modeling assumptions. Earlier research had demonstrated that in the absence of regulation some employers may voluntarily pay workers some overtime premium to entice them to work longer hours, to compensate workers for unexpected changes in their schedules, or as a result of collective bargaining.[105] Thus Barkume assumed that workers would receive an average voluntary overtime pay premium of 28 percent in the absence of an overtime pay regulation. Including this voluntary overtime pay from employers, he estimated that in response to overtime pay regulation, the wage adjusted downward by 80 percent of the amount that would occur with the employment contract model. Conversely, when Barkume assumed workers would receive no voluntary overtime pay premium in the absence of an overtime pay regulation, wages adjusted downward 40 percent of the amount the employment contract model predicted.[106] [107] However, while it seemed reasonable that some premium was paid for overtime in the absence of regulation, Barkume's assumption of a 28 percent initial overtime premium is likely too high for the salaried workers potentially affected by a change in the salary and compensation level requirements for the EAP exemptions.[108]

Modeling Employer Adjustments to the Hourly Rate of Pay and Overtime Hours

In practice, employers do not seem to adjust wages of regular overtime workers to the full extent indicated by the employment contract model, and thus employees appear to get a small but significant increase in weekly earnings due to coverage by overtime pay regulations. Barkume and Trejo found evidence partially supporting both the employment contract model and the full overtime premium model in response to a 50 percent overtime premium requirement: A decrease in the regular rate of pay for workers with overtime (but not the full decrease to the employment contract model level) and a decrease in the probability of working overtime. Therefore, when modeling employer responses with respect to the adjustment to the regular rate of pay, the Department used a method that falls somewhere between the employment contract model and the full overtime premium model (*i.e.,* the partial employment contract model).

Barkume reported two methods to estimate this partial employment contract wage, depending on the amount of overtime pay assumed to be paid in the absence of regulation. As noted above, the Department believes both the model assuming a voluntary 28 percent overtime premium and the model assuming no voluntary overtime premium are unrealistic for the affected population. Therefore, lacking more information, the Department determined that an appropriate estimate of the impact on the implicit hourly rate of pay for regular overtime workers after the proposed rule should be determined using the average of Barkume's two estimates of partial employment contract model adjustments: A wage change that is 40 percent of the wage change assuming an initial zero overtime pay premium, and a wage change that is 80 percent of the wage change assuming an initial 28 percent overtime pay premium.[109] This is approximately equivalent to assuming that overtime workers received a 14 percent overtime premium in the absence of regulation (the mid-point between 0 and 28 percent).

How employers adjust workers' wages and hours depends on employment conditions. The discussion begins with a description of how employment conditions affect employers' wage adjustments depending on the differing work characteristics of their employees. However, changing employees' earnings is also likely to result in adjustments to hours worked. Thus, after estimating wage adjustments the Department calculated the adjustments to hours worked as a function of the new wage. Finally, transfers from employers to employees were estimated as a function of the changes in wages and the changes in hours.

The Department identified four types of workers whose work characteristics impact how employers were modeled to respond to the proposed changes in both the standard and HCE salary levels:

[103] Barkume, A. (2010). The Structure of Labor Costs with Overtime Work in U.S. Jobs. *Industrial and Labor Relations Review,* 64(1), 128–142. Trejo, S.J. (1991). The Effects of Overtime Pay Regulation on Worker Compensation. *American Economic Review,* 81(4), 719–740.

[104] Since both papers were based on cross-sectional data, findings were assumed to be at the final equilibrium wages. Studies showing wage contracts are likely to be stickier in the short run than in the long run have limited applicability here since this analysis deals exclusively with salaried workers who are less likely to be aware of their implicit hourly wage rate. The Department has modeled a sticky adjustment process by assuming the wage elasticity of demand for labor is smaller in Year 1 than in subsequent years.

[105] Barzel, Y. (1973). The Determination of Daily Hours and Wages. *The Quarterly Journal of Economics,* 87(2), 220–238 demonstrated that modest fluctuations in labor demand could justify substantial overtime premiums in the employment contract model. Hart, R.A. and Yue, M. (2000). Why Do Firms Pay an Overtime Premium? IZA Discussion Paper No. 163, showed that establishing an overtime premium in an employment contract can reduce inefficiencies.

[106] Barkume's estimates are consistent with Trejo's 1991 finding that the wage adjustment when there is no overtime premium was only about 40 percent of the full employment contract model adjustment. Trejo's estimates range from 25 percent to 49 percent and average 40 percent. Trejo, S.J. (1991). The Effects of Overtime Pay Regulation on Worker Compensation. *American Economic Review,* 81(4), 719–740.

[107] Consider a worker earning $500 and working 50 hours per week. Assuming no overtime premium is paid the imputed hourly rate of pay is $10. Assuming a 28 percent overtime premium, the hourly rate of pay is $9.47 (($9.47 × 40) + (($9.47 × 1.28) × 10)) = $500. If the hourly rate of pay was fully adjusted to the employment contract model level when overtime pay is newly required, the hourly rate of pay would be $9.09 (($9.09 × 40) + (($9.09 × 1.5) × 10)) = $500. Forty percent of the adjustment from $10 to $9.09 results in an adjusted regular rate of pay of $9.64. Eighty percent of the adjustment from $9.47 to $9.09 results in an adjusted hourly rate of pay of $9.17. The Department took the average of these two adjusted wages to estimate that the resulting hourly rate of pay would be $9.40.

[108] Barkume (2010) based this assumption on the findings of Bell, D. and Hart, R. (2003). Wages, Hours, and Overtime Premia: Evidence from the British Labor Market. *Industrial and Labor Relations Review,* 56(3), 470–480. This study used 1998 data on male, non-managerial full-time workers in Britain. British workers were likely paid a larger voluntary overtime premium than American workers because Britain did not have a required overtime pay regulation and so collective bargaining played a larger role in implementing overtime pay.

[109] Both studies considered a population that included hourly workers. Evidence is not available on how the adjustment towards the employment contract model differs between salaried and hourly workers. The employment contract model may be more likely to hold for salaried workers than for hourly workers since salaried workers directly observe their weekly total earnings, not their implicit equivalent hourly wage. Thus, applying the partial adjustment to the employment contract model as estimated by these studies may overestimate the transfers from employers to workers who are salaried.

- *Type 1:* Workers who do not work overtime. These workers will not experience any adjustment in their hourly rate of pay.
- *Type 2:* Workers who do not regularly work overtime but occasionally work overtime.[110] Some of these workers' implicit hourly rate of pay will fall.[111] Others will have no change in their hourly rate of pay.
- *Type 3:* Workers who regularly work overtime. These workers' implicit hourly rate of pay falls to reflect the partial employment contract model adjustment.[112]
- *Type 4:* Workers who regularly work overtime. These workers differ from the Type 3 workers in that once wages and hours are adjusted, weekly earnings are greater than the proposed salary level, so employers will increase these workers' earnings to the proposed salary level so they can continue to claim the EAP exemption for them.[113]

Type 1 affected EAP workers will become overtime eligible, but since they do not work overtime, they will see no change in their weekly earnings. Type 2 and Type 3 affected EAP workers will become overtime eligible and must be paid the overtime premium for any overtime hours worked and may see changes in their regular rate of pay, and/or hours, and thus weekly earnings. As explained in more detail below, Type 2 and Type 3 affected workers were modeled differently due to the difference in the nature of the overtime hours worked. Type 3 workers receive wages adjusted for partial compliance with the employment contract model and their hours adjust in response. Type 4 workers are those who regularly work overtime, but will remain exempt because their weekly earnings will be raised to the proposed EAP salary level (either the standard salary level or HCE compensation level depending on which test the worker passed). How employers respond to workers who work overtime hours is described in more detail in the following paragraphs for Type 2 and Type 3 workers.

The Department distinguishes those who regularly work overtime (Type 3 workers) from those who occasionally, or irregularly, work overtime (Type 2 workers) because employer adjustment to the proposed rule may differ accordingly. The Department believes that employers are more likely to adjust hours worked and wages for regular overtime workers because their hours are predictable. Conversely, it may be more difficult to adjust hours and wages for occasional overtime workers because employers may be responding to a transient, perhaps unpredicted, shift in market demand for the good or service they provide. In this case it is likely advantageous for the employer to pay for this occasional overtime rather than to adjust permanent staffing. Additionally, the transient and possibly unpredicted nature of the change may make it difficult to adjust wages for these workers.

The Department treats Type 2 affected workers in two ways due to the uncertainty of the nature of these occasional overtime hours worked. If these workers work extra hours on an unforeseen, short-term, as-needed basis (*e.g.,* to adjust to unanticipated increases in demand), then there may be less opportunity for employers to adjust straight-time wages downward.[114] However, if these workers work extra hours on a foreseen, periodic basis (*e.g.,* work a few extra hours one week each month, but workers do not consider it ''regular overtime'' because they do not work overtime during three weeks each month), then there may be some opportunity for employers to adjust straight-time wages downward (*e.g.,* so pre- and post-revision monthly income is more similar). That this overtime is periodic and predictable is what makes it much more similar to that worked by Type 3 workers, and provides employers with more opportunity to adjust hours and wages. Since in reality there is likely a mix of these two occasional overtime scenarios, the Department combines models representing these two scenarios when estimating impacts.[115]

Our estimate for how Type 2 workers are affected is based on the assumption that 50 percent of these workers who worked occasional overtime worked *expected* overtime hours and the other 50 percent worked *unexpected* overtime. Workers were randomly assigned to these two groups. Workers with *expected* occasional overtime hours were treated like Type 3 affected workers (partial employment contract model adjustments). Workers with *unexpected* occasional overtime hours were assumed to receive a 50 percent pay premium for the overtime hours worked (full overtime premium model).

Since affected Type 2 and Type 3 EAP workers work more than 40 hours per week, whether routinely or occasionally, they will now be overtime protected. These workers will receive an overtime premium based on their implicit hourly wage adjusted as described above. Because employers must now pay more for the same number of labor hours, they will seek to reduce those hours; in economics, this is described as a decrease in the quantity of labor hours demanded (a movement to the left along the labor demand curve). It is the net effect of these two changes that will determine the final weekly earnings for affected EAP workers. Next we describe how these workers' hours adjust in response to the change in their implicit hourly wage and the requirement to pay an overtime premium on that wage for each hour worked in excess of 40 hours per week.

The reduction in hours is calculated using the elasticity of labor demand with respect to wages. The Department used a short-run demand elasticity of

[110] Type 2 workers are those who worked overtime in the survey week (the week referred to in the CPS MORG questionnaire). If a different week was chosen as the survey week then likely some of these workers would not have worked overtime. However, because the data are representative of both the population and all twelve months in a year, the Department believes the share of Type 2 workers in the given week is representative of an average week in the year.

[111] The Department assumes that Type 2 workers are currently paid additional wages for overtime hours worked at the usual hourly wage rate. Specifically, Type 2 workers' actual earnings for the week are calculated as (usual weekly earnings/usual hours worked) x (actual hours worked last week).

[112] The reduction in the regular hourly wage is restricted by the minimum wage; the wage cannot fall below the minimum wage.

[113] It is possible that employers will increase the salaries paid to some ''occasional'' overtime workers to maintain the exemption for the worker, but the Department has no way of identifying these workers.

[114] Employers may be reluctant to reset hourly wage rates to respond to unexpected changes to the need for overtime because the negative impact on worker morale may outweigh the gains from adjusting wages to unexpected shifts in demand. Of relevance is the well-established literature that shows employers do not quickly adjust wages downward in regard to downturns in the economy; the same logic applies to our approach to unexpected changes in demand. See, for example: Bewley, T. (1999). Why Wages Don't Fall During a Recession. Cambridge, MA: Harvard University Press. See also Barzel, Y. (1973). The Determination of Daily Hours and Wages. *The Quarterly Journal of Economics,* 87(2), 220–238.

[115] Trejo and Barkume's adjustments are averages; excluding some workers (*i.e.,* half of Type 2 workers) from these adjustments could potentially bias the size of the adjustment for the workers who continue to receive the adjustment. This bias would exist if Barkume and Trejo estimated the average adjustment for a sample of workers including irregular overtime workers and the size of the adjustment for these workers differs from other workers. It is not clear whether Trejo's and Barkume's samples include both occasional and regular overtime workers; however, the Department's interpretation is that Trejo includes only workers who usually work overtime and Barkume includes both. If these assumptions are correct, the magnitude of this RIA's adjustment made for the workers whose wages and hours are adjusted would be appropriate if it were applying Trejo's results but may, due to applying Barkume's, result in an underestimate of the average fall in base wages. We believe the magnitude of any potential bias will be small because the half of Type 2 workers who are occasional overtime workers (and thus treated differently) compose only 8 percent of Type 2 and Type 3 workers.

−0.20 to estimate the percentage decrease in hours worked resulting from the increase in average hourly wages in Year 1 calculated using the adjusted base wage and the overtime wage premium.[116] The interpretation of the short run demand elasticity in this context is that a 10 percent increase in wages will result in a 2 percent decrease in hours worked. Transfers projected for years 2 through 10 used a long-run elasticity; this will be discussed in section VII.D.x.1.[117]

The Department calculates the percent increase in hourly wages since it must be used with the elasticity of labor demand to determine the change in hours. This is equal to workers' new average hourly wage (including overtime pay) divided by their original implicit hourly wage. For Type 3 affected workers, and the 50 percent of Type 2 affected workers who worked *expected* overtime, we estimate adjusted total hours worked after making wage adjustments using the partial employment contract model. To estimate adjusted hours worked, we set the percent change in total hours worked equal to the percent change in average wages multiplied by the wage elasticity of labor demand.[118] The wage elasticity of labor demand was determined from a review of published econometric studies. The percent change in average wages is equal to the adjusted implicit average hourly wage minus the original implicit average hourly wage divided by the original implicit average hourly wage. The original implicit average hourly wage is equal to original weekly earnings divided by original hours worked. The adjusted implicit average hourly wage is equal to adjusted weekly earnings divided by adjusted total hours worked. Adjusted weekly earnings equals the adjusted hourly wage (*i.e.,* after the partial employment contract model adjustment) multiplied by 40 hours plus adjusted hours worked in excess of 40 multiplied by 1.5 times the adjusted hourly wage.

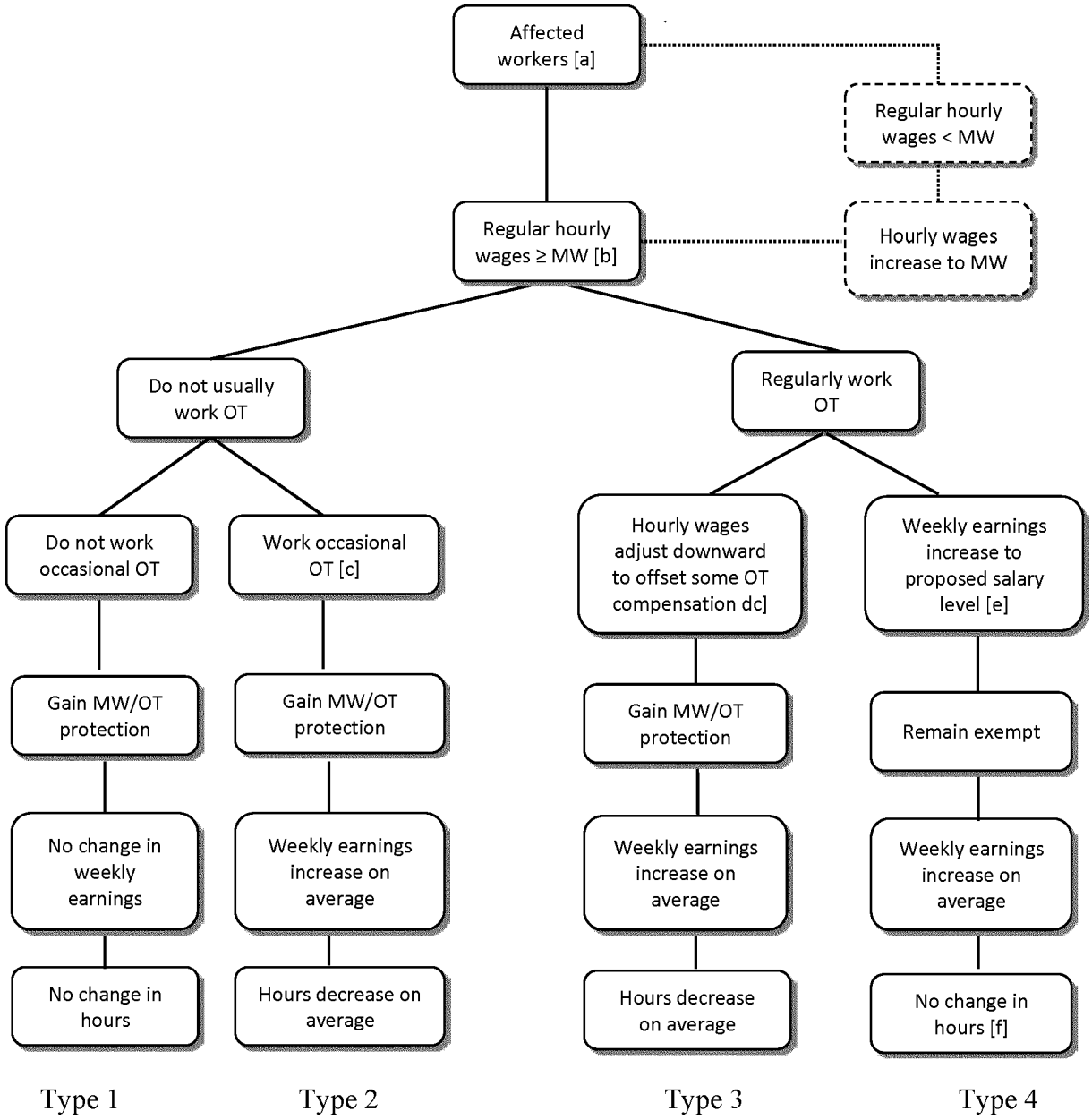
Figure 4 is a flow chart summarizing the four types of affected EAP workers. Also shown are the impacts on exempt status, weekly earnings, and hours worked for each type of affected worker.

[116] This elasticity estimate is based on the Department's analysis of Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958. Some researchers have estimated larger impacts from own wage changes on the number of overtime hours worked (Hamermesh, D. and S. Trejo. (2000). The Demand for Hours of Labor: Direct Evidence from California. *The Review of Economics and Statistics,* 82(1), 38–47 conclude the price elasticity of demand for overtime hours is at least −0.5). The Department decided to use a general measure of elasticity applied to the average change in wages since the increase in the overtime wage is somewhat offset by a decrease in the non-overtime wage as indicated in the employment contract model, and welcomes comments on the appropriate elasticity to be used in this analysis.

[117] In the short-run not all factors of production can be changed and so the change in hours demanded is smaller than in the long run, when all factors are flexible.

[118] In this equation, the only unknown is adjusted total hours worked. Since adjusted total hours worked is in the denominator of the left side of the equation and is also in the numerator of the right side of the equation, solving for adjusted total hours worked requires solving a quadratic equation.

Figure 4: Flow Chart of Proposed Rulemaking's Impact on Earnings and Hours Worked



[a] Affected EAP workers are those who are exempt under the current EAP exemptions and would gain minimum wage and overtime protection or receive a raise to the proposed increased salary level.

[b] Depending on how employers respond to this rule, some workers may experience adverse consequences due to a reduction in their hours of work, potentially necessitating a second job to maintain their pre-rule earnings level.

[c] Occasional overtime workers are those who responded that they (1) do not usually work overtime and (2) worked overtime in the survey week. In any given week different workers may be working occasional overtime but the Department assumes the total number of occasional overtime workers and occasional overtime hours are similar across weeks.

[d] The amount wages are adjusted downwards depends on whether the employment contract model or the labor demand model holds. The Department's preferred method uses a combination of the two. Employers reduce the regular hourly wage rate somewhat in response to overtime pay requirements, but the wage is not reduced enough to keep total compensation constant.

[e] Based on hourly wage and weekly hours it is more cost efficient for the employer to increase the worker's weekly salary to the updated salary level than to pay overtime pay.

[f] The Department assumed hours would not change due to lack of data and relevant literature; however, it is possible employers will increase these workers' hours in response to paying them a higher salary.

Estimates of the Number of and Impacts on Affected EAP workers

The Department projects 4.7 million workers will be affected by either (1) an increase in the standard salary level to the 40th earnings percentile because they earn salaries between $455 per week and $921 per week or (2) an increase in the HCE compensation level to the 90th earnings percentile, $122,148 annually. These workers are categorized into the four ''types'' identified previously. There are 3.5

million Type 1 workers (74.7 percent of all affected EAP workers), those who work 40 hours per week or less and thus will not be paid an overtime premium despite their expected change in status to overtime protected (Table 20). Type 2 workers, those who are expected to become overtime eligible and do not usually work overtime but did work overtime in the survey week (*i.e.,* occasional overtime workers), total 181,000 workers (3.9 percent of all affected EAP workers). Type 3 workers, those who are expected to become overtime eligible and be paid the overtime premium, are composed of an estimated 931,000 workers (19.9 percent of all affected EAP workers). The number of affected Type 4 workers was estimated to be 71,000 workers (1.5 percent of all affected workers); these are workers who the Department believes will remain exempt because firms will have a financial incentive to increase their weekly salaries to the proposed salary level so that they remain exempt, rather than pay a premium for overtime hours.[119]

TABLE 20—AFFECTED EAP WORKERS BY TYPE (1,000S), 2013

	Total[a]	No overtime worked (T1)	Occasional OT (T2)	Regular OT	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard salary level	4,646	3,478	180	920	67
HCE compensation level	36.2	20.7	1.0	11.1	3.4
Total	4,682	3,499	181	931	71

Note: Pooled data for 2011–2013.

[a] Estimated number of workers exempt under the EAP exemptions who would be entitled to overtime protection under the proposed salary levels (if their weekly earnings do not increase to the proposed salary levels).

*Type 1: Workers without regular OT and without occasional OT.

*Type 2: Workers without regular OT but with occasional OT. Paid overtime premium pay, so average weekly earnings increase, but regular rate of pay and hours fall for 50 percent of workers.

*Type 3: Workers with regular OT who become nonexempt. Paid overtime premium pay, so average weekly hours increase, but regular rate of pay and hours fall.

*Type 4: Workers with regular OT who remain exempt (*i.e.,* are paid the proposed salary level).

The proposed rulemaking will likely impact affected workers' wages, hours, and earnings. How these will change depends on the type of worker. Predicted changes in implicit wage rates are outlined in Table 21; changes in hours in Table 22; and changes in weekly earnings in Table 23. Type 1 workers will have no change in wages, hours, or earnings.[120]

Estimating changes in the regular rate of pay for Type 3 workers and the 50 percent of Type 2 workers who regularly work occasional overtime requires application of the partial employment contract model, which predicts a decrease in their average regular rates of pay. The Department estimates that employers would decrease these workers' regular hourly rates of pay to the amount predicted by the partial employment contract model adjustment. Employers would not be able to adjust the regular rate of pay for the occasional overtime workers whose overtime is irregularly scheduled and unpredictable (the remaining 50 percent of Type 2 workers). As a group, Type 2 workers currently exempt under the standard test would see a decrease in their average regular hourly wage (*i.e.,* excluding the overtime premium) from $18.30 to $17.88, a decrease of 2.3 percent. Type 2 workers paid between $100,000 and the proposed HCE compensation level would see an average decrease in their regular hourly wage from $52.99 to $50.85, a decrease of 4.0 percent. However, because workers will now receive a 50 percent premium on their regular hourly wage for each hour worked in excess of 40 hours per week, average weekly earnings for Type 2 workers would increase.

Type 3 workers will also receive decreases in their regular hourly wage as predicted by the partial employment contract model. Type 3 affected workers paid below the proposed standard salary level would have their regular hourly rate of pay decrease on average from $14.71 to $13.93 per hour, a decrease of 5.3 percent. Type 3 workers paid between $100,000 and the proposed HCE compensation level would have their regular rate of pay decrease on average from $39.23 to $36.66 per hour, a decrease of 6.5 percent. Again, although regular hourly rates decline, weekly earnings will increase on average because these workers are now eligible for the overtime premium.

Type 4 workers' implicit hourly rates of pay would increase in order for their earnings to meet the proposed standard salary level ($921 per week) or the proposed HCE annual compensation level (122,148 annually). The implicit hourly rate for Type 4 affected EAP workers who had earned between $455 and $921 per week would *increase* on average from $16.40 to $16.72 (a 2.0 percent increase) (Table 21). The implicit hourly rate of pay for Type 4 workers who had earned between $100,000 and $122,148 annually would *increase* on average from $41.87 to $42.32 (a 1.1 percent increase).

[119] As previously described, the Department calculated a wage and hour adjustment for all regular overtime workers. Consider, by way of example, a worker who initially earned $900 and worked 70 hours per week. Suppose the partial employment contract adjustment results in a regular rate of pay of $11.94 and 69.5 hours worked per week. After the partial employment contract adjustments, this worker would receive approximately $1,006 per week ((40 × $11.94) + (29.5 × ($11.94 × 1.5)). Since this is greater than the proposed standard salary level, the Department estimated that this worker would have his salary increased to $921 and remain exempt at that threshold.

[120] It is possible that these workers may experience an increase in hours and weekly earnings because of transfers of hours from overtime workers. Due to the high level of uncertainty in employers' responses regarding the transfer of hours, the Department did not have credible evidence to support an estimation of the number of hours transferred to other workers.

TABLE 21—AVERAGE REGULAR RATE OF PAY BY TYPE OF AFFECTED EAP WORKER, 2013

	Total	No overtime worked (T1)	Occasional OT (T2)	Regular OT	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard Salary Level					
Before proposed rule	$18.38	$19.39	$18.30	$14.71	$16.40
After proposed rule	18.21	19.39	17.88	13.93	16.72
Change	−0.17	0.00	−0.42	−0.78	0.33
HCE Compensation Level					
Before proposed rule	$47.26	$52.18	$52.99	$39.23	$41.87
After proposed rule	46.46	52.18	50.85	36.66	42.32
Change	−0.80	0.00	−2.14	−2.57	0.45

Note: Pooled data for 2011–2013.
*Type 1: Workers without regular OT and without occasional OT.
*Type 2: Workers without regular OT but with occasional OT. Paid overtime premium pay, so average weekly earnings increase, but regular rate of pay and hours fall for 50 percent of workers.
*Type 3: Workers with regular OT who become nonexempt. Paid overtime premium pay, so average weekly hours increase, but regular rate of pay and hours fall.
*Type 4: Workers with regular OT who remain exempt (*i.e.,* are paid the proposed salary level).

Type 1 and Type 4 workers would have no change in hours. Type 1 workers' hours would not change because they do not work overtime and thus the requirement to pay an overtime premium does not affect them. Type 4 workers' hours would not change because they continue to be exempt, and therefore are not paid a premium for overtime hours. Type 2 and Type 3 workers would see a small decrease in their hours of overtime worked. This reduction in hours is relatively small and is due to the effect on labor demand of the increase in the average hourly base wage as predicted by the employment contract model.[121]

Type 2 workers who would be newly overtime eligible would see a decrease in average weekly hours in weeks where occasional overtime is worked, from 48.0 to 47.9 hours (0.3 percent) (Table 22).[122] Type 2 workers who would no longer earn the HCE compensation level would see a decrease in average weekly hours in applicable weeks from 46.5 to 46.3 (0.4 percent).

Type 3 workers affected by the increase in the standard salary level would see a decrease in hours worked from 50.7 to 50.3 hours per week (0.8 percent). Type 3 workers affected by the increase in the HCE compensation level would see an average decrease from 53.7 to 53.3 hours per week (0.8 percent).

TABLE 22—AVERAGE WEEKLY HOURS FOR AFFECTED EAP WORKERS BY TYPE, 2013

	Total	No overtime worked (T1)	Occasional OT (T2)	Regular OT	
				Newly nonexempt (T3)	Remain exempt (T4)
Standard Salary Level [a]					
Before proposed rule	41.6	38.6	48.0	50.7	56.9
After proposed rule	41.5	38.6	47.9	50.3	56.9
Change	−0.1	0.0	−0.1	−0.4	0.0
HCE Compensation Level [a]					
Before proposed rule	45.8	39.8	46.5	53.7	56.4
After proposed rule	45.7	39.8	46.3	53.3	56.4
Change	−0.1	0.0	−0.2	−0.4	0.0

Note: Pooled data for 2011–2013.
[a] Usual hours for Types 1, 3, and 4 but actual hours for Type 2.
*Type 1: Workers without regular OT and without occasional OT.
*Type 2: Workers without regular OT but with occasional OT. Paid overtime premium pay, so average weekly earnings increase, but regular rate of pay and hours fall for 50 percent of workers.
*Type 3: Workers with regular OT who become nonexempt. Paid overtime premium pay, so average weekly hours increase, but regular rate of pay and hours fall.
*Type 4: Workers with regular OT who remain exempt (*i.e.,* are paid the proposed salary level).

[121] The Department estimates that half of Type 2 workers will not see a reduction in their hours; however as a group, Type 2 workers are expected to experience a reduction in their hours of work.

[122] Type 2 workers do not see increases in regular earnings to the new salary level (as Type 4 workers do) even if their new earnings exceed that new level. This is because the estimated new earnings only reflect their earnings in that week; their earnings for the entire year do not necessarily exceed the salary level.

Because Type 1 workers do not experience a change in their regular rate of pay or hours they would have no change in earnings due to the proposed rule (Table 23). While their hours are not expected to change, Type 4 workers' salaries would increase to the proposed standard salary level or HCE compensation level (depending on which test they pass). Thus, Type 4 workers' average weekly earnings would increase by $20.47 (2.3 percent) for those affected by the change in the standard salary level and by $27.36 per week (1.2 percent) for those affected by the HCE compensation level.

Although both Type 2 and Type 3 workers on average experience a decrease in both their regular rate of pay and hours worked, their weekly earnings are expected to increase as a result of the overtime premium. Based on a standard salary level of $921 per week, Type 2 workers' average weekly earnings increase from $879.35 to $925.33, a 5.2 percent increase.[123] The average weekly earnings of Type 2 workers affected by the change in the HCE compensation level were estimated to increase from $2,470.77 to $2,514.22, a 1.8 percent increase.

Average weekly earnings of Type 3 workers also increase. For Type 3 workers affected by the standard salary level, average weekly earnings would increase from $731.54 to $751.13, an increase of 2.7 percent. Type 3 workers affected by the change in the HCE compensation level have an increase in average weekly earnings from $2,057.41 to $2,117.56, an increase of 2.9 percent.

TABLE 23—AVERAGE WEEKLY EARNINGS FOR AFFECTED EAP WORKERS BY TYPE, 2013

	Total	No overtime worked (T1)	Occasional OT (T2)	Regular OT	
				Newly Nonexempt (T3)	Remain exempt (T4)
Standard Salary Level [a] [b]					
Before proposed rule	$730.58	$719.31	$879.35	$731.54	$900.53
After proposed rule	736.54	719.31	925.33	751.13	921.00
Change	5.96	0.00	45.97	19.60	20.47
HCE Compensation Level [a] [b]					
Before proposed rule	2,103.26	2,075.18	2,470.77	2,057.41	2,321.64
After proposed rule	2,125.42	2,075.18	2,514.22	2,117.56	2,349.00
Change	22.16	0.00	43.45	60.15	27.36

Note: Pooled data for 2011–2013.

[a] The mean of the hourly wage multiplied by the mean of the hours does not necessarily equal the mean of the weekly earnings because the product of two averages is not necessarily equal to the average of the product.

[b] Weekly earnings for weeks where overtime is worked. Thus for Type 3 and 4 workers weekly earnings is derived by multiplying the wage by usual hours worked but for Type 2 workers weekly earnings is derived by multiplying the wage by actual hours worked in the survey week.

* Type 1: Workers without regular OT and without occasional OT.

* Type 2: Workers without regular OT but with occasional OT. Paid overtime premium pay, so average weekly earnings increase, but regular rate of pay and hours fall for 50 percent of workers.

* Type 3: Workers with regular OT who become nonexempt. Paid overtime premium pay, so average weekly hours increase, but regular rate of pay and hours fall.

* Type 4: Workers with regular OT who remain exempt (*i.e.,* are paid the proposed salary level).

Weekly earnings after an increase to the proposed standard salary level were estimated using the new wage (*i.e.,* the partial employment contract model wage) and the reduced number of overtime hours worked. At the proposed standard salary level, the average weekly earnings of all affected workers will increase from $730.58 to $736.54, a change of $5.96 (0.8 percent). However, these figures mask the impact on workers whose hours and earnings will change because Type 1 workers make up more than 70 percent of the pool of affected workers. If Type 1 workers, who do not work overtime, are excluded the average increase in weekly earnings is $23.72.

At the proposed standard salary level, multiplying the average change of $5.96 by the 4.6 million affected standard EAP workers equals an increase in earnings of $27.7 million per week or $1,441 million in the first year (Table 24). Of the weekly total, $897,000 is due to the minimum wage provision and $26.8 million stems from the overtime pay provision. For workers affected by the change in the HCE compensation level, average weekly earnings increase by $22.16 ($51.91 if Type 1 workers, who do not work overtime, are excluded). When multiplied by 36,000 affected workers, the national increase in weekly earnings will be $801,000 per week, or $41.7 million in the first year. Thus, Year 1 transfer payments attributable to this proposed rule total $1,482.5 million. If the Department assumed Type 2 workers received no additional pay for occasional overtime hours prior to the rulemaking (as discussed above), then Year 1 transfers would instead be $1,499.1 million.

[123] For these calculations, the Department assumed Type 2 workers are paid their regular rate of pay for all occasional overtime hours. For example, if a Type 2 worker earned $700 per week and normally worked a 40 hour workweek then his or her regular rate of pay would be $17.50 per hour. If that person worked 10 hours of overtime in some week, he or she would earn $875 ($700 + $17.50 × 10) in that week. This is why baseline average weekly earnings are higher than for other types of workers. These workers do not see increases in regular earnings to the new salary level since their earnings only exceed the salary level in some weeks. If instead, the Department assumed Type 2 workers received no additional pay for occasional overtime hours, but merely received their usual weekly salary, then estimated baseline earnings would be smaller, and estimated transfers would be larger for these workers.

TABLE 24—TOTAL CHANGE IN WEEKLY AND ANNUAL EARNINGS FOR AFFECTED EAP WORKERS BY PROVISION, 2013

Provision	Total change in earnings (1,000s)	
	Weekly	Annual
Total [a]	$28,509	$1,482,490
Standard salary level Total	27,708	1,440,825
Minimum wage only	897	46,662
Overtime pay only [b]	26,811	1,394,163
HCE compensation level Total	801	41,665
Minimum wage only	.....	.....
Overtime pay only [b]	801	41,665

[a] Due to both the minimum wage and overtime pay provisions and proposed changes in both the standard salary level and the HCE compensation level.
[b] Estimated by subtracting the minimum wage transfer from the total transfer.

4. Potential Transfers Not Quantified

There may be additional transfers attributable to this proposed rulemaking; however, the magnitude of these other transfers could not be quantified. These transfers are discussed in this section, as well as in section VII.D.vii, below.

Converted to Hourly Status From Salaried Status

Changing the EAP salary and HCE compensation level tests may impact whether a worker is classified as overtime ineligible or overtime eligible. Some evidence suggests that it is more costly for an employer to employ a salaried worker than an hourly worker. If true, employers may choose to accompany the change in exemption status with a change to the employee's method of pay, from salary to an hourly basis, since there is no longer an incentive to classify the worker as salaried.[124] Several employer stakeholders noted that salaried workers may perceive such a change as a loss of status.

If the worker prefers to be salaried rather than hourly, then this change may impact the worker. The likelihood of this impact occurring depends on the costs to employers and benefits to employees of being salaried. Research has shown that salaried workers (who are not synonymous with exempt workers, but whose status is correlated with exempt status) are more likely than hourly workers to receive benefits such as paid vacation time and health insurance [125] and are more satisfied with their benefits,[126] and that when employer demand for labor decreases hourly workers tend to see their hours cut before salaried workers, making earnings for hourly workers less predictable.[127] However, this literature generally does not control for differences between salaried and hourly workers such as education, job title, or earnings; therefore, this correlation is not necessarily attributable to hourly status.

Additionally, even if a worker's salaried status is not officially changed, a salaried worker may effectively become an hourly worker if managers have to monitor hours more closely, so the worker may have less flexibility in work schedule.[128]

Reduced earnings for some workers

Holding regular rate of pay and work hours constant, payment of an overtime premium will increase weekly earnings for workers who work overtime. However, as discussed previously, employers may try to mitigate cost increases by reducing the number of overtime hours worked, either by transferring these hours to other workers or monitoring hours more closely. Depending on how hours are adjusted, a specific worker may earn less pay after this proposed rulemaking. For example, assume an exempt worker is paid for overtime hours at his regular rate of pay (not paid the overtime premium but still acquires a benefit from each additional hour worked over 40 in a week). If the employer does not raise the worker's salary to the new level, requiring the overtime premium may cause the employer to reduce the worker's hours to 40 per week. If the worker's regular rate of pay does not increase, the worker will earn less due to the lost hours of work.

vi. Deadweight Loss

Deadweight loss (DWL) occurs when a market operates at less than optimal equilibrium output. This typically results from an intervention that sets, in the case of a labor market, wages above their equilibrium level. While the higher wage results in transfers from employers to workers, it also causes a decrease in the total number of labor hours that are being purchased on the market. DWL is a function of the difference between the wage the employers were willing to pay for the hours lost and the wage workers were willing to take for those hours. In other words, DWL represents the total loss in economic surplus resulting from a ''wedge'' between the employer's willingness to pay and the worker's willingness to accept work arising from the proposed change. DWL may vary in magnitude depending on market parameters, but is typically small when wage changes are small or when labor supply and labor demand are relatively price (wage) inelastic.

The DWL resulting from this proposed rulemaking was estimated based on the average decrease in hours worked and increase in hourly wages calculated in section VII.D.v. As the cost of labor rises due to the requirement to pay the overtime premium, the demand for overtime hours decreases, which results in fewer hours of overtime worked. To calculate the DWL, the following values must be estimated:

- The increase in average hourly wages for affected EAP workers,
- the decrease in average hours per worker, and

[124] There is no requirement that overtime eligible employees be paid on an hourly basis. Paying such employees on a salary basis is appropriate so long as the employee receives overtime pay for working more than 40 hours in the workweek. *See* 29 CFR 778.113.

[125] Lambert, S. J. (2007). Making a Difference for Hourly Employees. In A. Booth, & A. C. Crouter, *Work-Life Policies that Make a Real Difference for Individuals, Families, and Communities.* Washington, DC: Urban Institute Press.

[126] Balkin, D. B., & Griffeth, R. W. (1993). The Determinants of Employee Benefits Satisfaction. *Journal of Business and Psychology,* 7(3), 323–339.

[127] Lambert, S. J., & Henly, J. R. (2009). *Scheduling in Hourly Jobs: Promising Practices for the Twenty-First Century Economy.* The Mobility Agenda. Lambert, S. J. (2007). Making a Difference for Hourly Employees.

[128] Swanberg, J. E., Pitt-Catsouphes, M., & Drescher-Burke, K. (2005). A Question of Justice: Disparities in Employees' Access to Flexible Schedule Arrangements. *Journal of Family Issues,* 26 (6), 866–895. WorldatWork Research. (2009). *Flexible Work Arrangements for Nonexempt Employees.* WorldatWork Research.

• the number of affected EAP workers.

Only 50 percent of Type 2 workers (those who work regular or predictable occasional overtime) and Type 3 workers are included in the DWL calculation because the other workers either do not work overtime (Type 1), continue to work the same number of overtime hours (Type 4), or their employers are unable to adjust their hourly wage because their overtime hours worked are unpredictable (the other 50 percent of Type 2 workers). As described above, after taking into account a variety of potential responses by employers, the Department estimated the average wage change for EAP affected workers whose hours change. Workers impacted by the change in the standard salary level are considered separately from workers impacted by the change in the HCE compensation level.

For workers affected by the revised standard salary level, and who experience a change in hours, average wages (including overtime) will increase by $0.68 per hour. Average hours will fall by 0.40 per week. These changes result in an average DWL of $0.14 per week per Type 2 (the 50 percent who work foreseeable overtime) and Type 3 worker. An estimated 1.01 million workers will be eligible for the overtime premium on some of their hours worked after employer adjustments are taken into account. Multiplying the $0.14 per worker estimate by the number of affected workers results in a total DWL of $7.2 million in the first year of this proposed rulemaking attributable to the revised standard salary level (1.01 million workers in DWL analysis x $0.14 per worker per week x 52 weeks).

For workers affected by the revised HCE compensation level and who experience a change in hours, the average hourly wage will increase by $2.14 and average hours worked will fall by 0.41 per week. This results in an average DWL of $0.44 per week for each of the estimated 12,000 workers affected by the compensation level who will see their hours fall. Multiplying this per worker estimate by the number of affected workers results in a DWL of $273,000 in the first year attributable to the HCE component of this proposed rulemaking (12,000 workers in DWL analysis x $0.44 per worker x 52 weeks). Thus, total DWL attributed to the proposed rulemaking is estimated to be $7.4 million in Year 1, which is small in comparison to the size of the costs and transfers associated with this proposal.

TABLE 25—SUMMARY OF DEADWEIGHT LOSS COMPONENT VALUES

Component	Standard salary level	HCE compensation level
Average hourly wages:		
Pre	$15.01	$40.31
Post	$15.70	$42.45
Change	$0.68	$2.14
Average overtime hours:		
Pre	10.45	13.14
Post	10.05	12.73
Change	−0.40	−0.41
Affected EAP workers	1,010,433	12,042
DWL:		
DWL per worker per week	$0.14	$0.44
Total annual DWL (millions)	$7.15	$0.27

Note: DWL analysis is limited to Type 2 (50%) and Type 3 workers who experience hour adjustments.

vii. Other Benefits, Costs and Transfers

1. Benefits, Costs and Transfers Due to Strengthening Overtime Protection for Other Workers

In addition to the 4.7 million affected EAP workers who will be newly eligible for overtime protection (absent employer response to increase the salary level to retain the exemption), overtime protection will be strengthened for an additional 10.0 million salaried workers who earn between the current salary level of $455 per week and the proposed salary level of $921 per week. These workers, who were previously vulnerable to misclassification through misapplication of the duties test, will now be automatically overtime protected because their salary falls below the new salary level and therefore they will not be subject to the duties test. These 10.0 million workers include:

• 6.3 million salaried white collar workers who are at particular risk of being misclassified because they currently pass the salary level test but do not satisfy the duties test; and

• 3.7 million salaried workers in blue collar occupations whose overtime protection will be strengthened because their salary will fall below the proposed salary threshold.[129] (Identification of blue collar workers is explained in section VII.B.iv).

Although these workers are currently entitled to minimum wage and overtime protection, their protection is better assured with the proposed salary level. The salary level test is considered a bright-line test because it is clear to employers and employees alike whether or not a worker passes. The duties test (which is the reason employers cannot claim the EAP exemption for the above workers) is more discretionary and therefore harder to apply. An outdated salary level reduces the effectiveness of this bright-line test. At the proposed salary level, the number of overtime-eligible white collar workers earning at or above the salary level will decrease by 6 million, and an estimated 806,562 (13.5 percent) of these workers are currently misclassified as exempt. Therefore, increasing the salary level is expected to result in less worker misclassification. Employers will be able to more readily determine their legal obligations and comply with the law, thus leading to benefits, costs and transfers that are qualitatively similar to the impacts discussed elsewhere in this analysis but the magnitudes of which have not been estimated.

2. Cost Savings: Reduction in Litigation

Reducing the number of white collar employees for whom a duties analysis must be performed in order to

[129] Some workers in this group may be overtime ineligible due to another non-EAP exemption.

determine entitlement to overtime will also reduce litigation related to the EAP exemption. As previously discussed, employer uncertainty about which workers should be classified as EAP exempt has contributed to a sharp increase in FLSA lawsuits over the past decade. Much of this litigation has involved whether employees who satisfy the salary level test also meet the duties test for exemption. *See, e.g, Soehnle* v. *Hess Corp.,* 399 F. App'x 749 (3d Cir. 2010) (gas station manager earning approximately $654 per week satisfied duties test for executive employee); *Morgan* v. *Family Dollar Stores, Inc.,* 551 F.3d 1233 (11th Cir. 2008) (store managers earning an average weekly salary of up to $706 did not satisfy duties test for executive exemption).

Setting an appropriate salary level for the standard duties test and maintaining the salary level with automatic updates will restore the test's effectiveness as a bright-line method for determining exempt status, and in turn decrease the litigation risk created when employers must apply the duties test to employees who generally are not performing bona fide EAP work. This will eliminate legal challenges regarding the duties test involving employees earning between the current salary level ($455) and the proposed level ($921). *See, e.g., Little* v. *Belle Tire Distribs., Inc.,* 588 F. App'x 424 (6th Cir. 2014) (applicability of administrative or executive exemption to tire store assistant manager earning $1,100 semi-monthly); *Taylor* v. *Autozone, Inc.,* 572 F. App'x 515 (9th Cir. 2014) (applicability of executive exemption to store managers earning as little as $800 per week); *Diaz* v. *Team Oney, Inc.,* 291 F. App'x. 947 (11th Cir. 2008) (applicability of executive duties test to pizza restaurant assistant manager earning $525 per week). Setting the salary level test at the proposed level will alleviate the need for employers to apply the duties test in these types of cases, which is expected to result in decreased litigation as employers will be able to determine employee exemption status through application of the salary level test without the need to perform a duties analysis. *See* Weiss Report at 8 (The salary tests ''have amply proved their effectiveness in preventing the misclassification by employers of obviously nonexempt employees, thus tending to reduce litigation. They have simplified enforcement by providing a ready method of screening out the obviously nonexempt employees, making an analysis of duties in such cases unnecessary.'')

3. Benefits and Costs: Reduction in Uncertainty about Future Overtime Hours and Pay

The proposed rule may have an impact on employees who are not currently working any overtime, but will now be entitled to minimum wage and overtime pay protections. These workers may face a lower risk of being asked to work overtime in the future, because they are now entitled to an overtime premium, which could reduce their uncertainty and improve their welfare if they do not desire to work overtime. Additionally, if they are asked to work overtime, they are compensated for the inconvenience with an overtime premium.

Economic theory suggests that workers tend to assign monetary values to risk or undesirable job characteristics, as evidenced by the presence of compensating wage differentials for undesirable jobs, relative to other jobs the worker can perform in the marketplace. To the extent a compensating wage differential exists, compensation may decrease with the reduction in uncertainty.[130] For this reason, overall compensation would be expected to decrease for workers whose uncertainty decreases. Employees who prefer the reduced uncertainty to the wage premium would experience a net benefit of the rule, and employees who prefer the wage premium to the reduced uncertainty would experience a net harm as a result of the rule. The Department believes that attempting to model the net monetary value of reduced uncertainty is not feasible due to its heavy reliance on data that are not readily available, and the potentially questionable nature of the resulting estimates.[131]

4. Benefits and Costs: Work-Life Balance

Due to the increase in marginal cost for overtime hours, employers will demand fewer hours from some of the workers affected by this rule.[132] The estimated transfer payment does not take into account the benefit to these workers of working fewer hours in exchange for more (or equal) pay. Therefore, an additional benefit of this proposed rulemaking is the increase in time off for affected EAP workers. On average, affected EAP workers were estimated to work 5.2 minutes less per week after the proposed rulemaking. The effect is much more pronounced when limited to just those workers whose hours are adjusted (50 percent of Type 2 and all Type 3 workers); they would on average work 23.9 minutes less per week after the proposed rulemaking. The additional time off may help these workers better balance work-life commitments, thus potentially making them better off.

Empirical evidence shows that workers in the United States typically work more than workers in other comparatively wealthy countries.[133] Although estimates of the actual level of overwork vary considerably, executive, administrative, and professional occupations have the highest percentage of workers who would prefer to work fewer hours compared to other occupational categories.[134] Therefore, the Department believes that the proposed rule may result in increased time off for a group of workers who may prefer such an outcome. However, the empirical evidence does not allow us to estimate how many workers would prefer fewer hours or how much workers value this additional time off so it is difficult to monetize the benefit they may receive. However, if we use affected workers' average wage to approximate the value they place on this time ($15.31), then the benefit of this additional time off would total $6.2 million weekly (0.40 hours x 1.02 million workers × $15.31). This would result in an estimated total benefit of $324.4 million per year.

This is likely an overestimate to the extent that not all workers would prefer to work fewer hours and thus some of these workers might experience an adverse impact. In addition, the estimated work loss represents an average over all affected workers, and some workers may experience a larger reduction in hours.[135]

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[130] In this case, the size of the compensating wage differential is a function of the likelihood of working overtime and the amount of overtime worked. If the probability of working overtime is small then the wage differential may not exist.

[131] For a discussion of compensating wage differentials, *see* Gronberg, T. J., & Reed, W. R. (1994). Estimating Workers' Marginal Willingness to Pay for Job Attributes using Duration Data. *Journal of Human Resources,* 29(3), 911–931.

[132] The Department recognizes that not all workers would prefer to work fewer hours and thus some of these workers might experience an adverse impact. The Department has no basis for estimating this potential impact.

[133] For more information, see OECD series, average annual hours actually worked per worker, available at: *http://stats.oecd.org/index.aspx?DataSetCode=ANHRS.*

[134] Hamermesh, D.S., Kawaguchi, D., Lee, J. (2014). Does Labor Legislation Benefit Workers?

Well-Being after an Hours Reduction. IZA DP No. 8077.

Golden, L., & Gebreselassie, T. (2007). Overemployment mismatches: the preference for fewer work hours. *Monthly Labor Review,* 130(4), 18–37.

Hamermesh, D.S. (2014). ''Not enough time?'' *American Economist,* 59(2).

[135] It is possible that some employers may choose to eliminate all overtime for affected workers and

Continued

5. Additional Benefits and Costs not Quantified

The largest benefit to workers from the proposed rule is the transfer of income from employers (as discussed in the transfer section of the analysis); but, to the extent that the benefits to workers outweigh the costs to employers, there may be a societal welfare increase due to this transfer. The channels through which societal welfare may increase and other secondary benefits may occur are discussed below and include increased productivity and improved worker outcomes, such as improved health. The discussion references the potential magnitude of these benefits where possible; however, due to data limitations and mixed evidence on the significance of such effects, the Department was not able to quantify the size of these potential benefits.

Health

Working long hours is correlated with an increased risk of injury or health problems.[136] Therefore, by reducing overtime hours, some affected EAP workers' health may improve. This would benefit the worker's welfare, their family's welfare, and society since fewer resources would need to be spent on health. Health has also been shown to be highly correlated with productivity.[137] These beneficial effects, and how they compare with other potential responses by employers, especially regarding workers who pass the duties test and whose salaries are either already above the proposed threshold or would be adjusted to be so, have not been quantified.

Increased productivity

This proposed rule is expected to increase the marginal cost of some workers' labor, predominately due to the overtime pay requirement since almost all affected EAP workers already earn the federal minimum wage. However, some of the cost to employers of paying the overtime premium may be offset by increased worker productivity. This may occur through a variety of channels, including: increased marginal productivity as fewer hours are worked, reduction in turnover, efficiency wages, and worker health.

Reduction in turnover: Research demonstrates a positive correlation between earnings and employee turnover: as earnings increase, employee turnover decreases.[138] [139] Reducing turnover may increase productivity, at least partially because new employees have less firm-specific capital (*i.e.,* skills and knowledge that have productive value in only one particular company) and thus are less productive and require additional supervision and training.[140] In short, replacing experienced workers with new workers decreases productivity, and avoiding that will increase productivity. Reduced turnover should also reduce firms' hiring and training costs. As a result, even though marginal labor costs rise, they may rise by less than the amount of the wage change because the higher wages may be offset by lower turnover rates, increased productivity, and reduced hiring costs for firms.

It is difficult to estimate the impact of reduced turnover on worker productivity and firm hiring costs. The potential reduction in turnover is a function of several variables: the current wage, hours worked, turnover rate, industry, and occupation. Additionally, estimates of the cost of replacing a worker who quits vary significantly. Therefore, quantifying the potential benefit associated with a decrease in turnover attributed to this proposed rule is difficult.

Efficiency wages: By increasing earnings this proposed rulemaking may increase a worker's productivity by incentivizing the worker to work harder. Thus the additional cost to firms may be partially offset by higher productivity. In particular, the estimated managerial costs associated with greater monitoring effort may be offset due to this effect. A strand of economic research, commonly referred to as ''efficiency wages,'' considers how an increase in wages may be met with greater productivity.[141] However, this literature tends to focus on firms voluntarily paying higher wages, and thus distinguishing themselves from other firms. Since this rulemaking mandates wage increases, extrapolating from efficiency wage theory may not provide a reliable guide to the likely effects of the rule.

Conversely, there are channels through which mandating overtime pay may reduce productivity. For example, some overtime hours may be spread to other workers. If the work requires significant project-specific knowledge or skills, then the new worker receiving these transferred hours may be less productive than the first worker, especially if there is a steep learning curve. Additionally, having an additional worker versed in the project may be beneficial to the firm if the first worker leaves the firm or is temporarily away (*e.g.,* sick) or by providing benefits of teamwork (*e.g.,* facilitating information exchange).

6. Transfers: Reduction in Social Assistance Expenditures

The transfer of income resulting from this proposed rule may result in reduced need for social assistance (and by extension reduced social assistance expenditures by the government). A worker earning the current salary level of $455 per week earns $23,660 annually. If this worker resides in a family of four and is the sole earner, then the family will be considered impoverished. This makes the family eligible for many social assistance programs. Thus, transferring income to these workers may reduce eligibility for government social assistance programs and government expenditures. A social welfare improvement will result from the reduced resource needs for making those transfer payments.

Benefits for which currently EAP exempt workers may qualify include Medicaid, the Supplemental Nutrition Assistance Program (SNAP), the Temporary Assistance for Needy Families (TANF) program, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and school breakfasts and lunches. Quantifying the impact of this proposed rulemaking on government expenditures

hire additional workers or spread the work to existing employees to replace the lost hours. The potential for this adjustment is uncertain, and the Department has found no studies that estimate the potential magnitude of this effect. In addition, an employer may be limited in his or her ability to make such adjustments; many affected employees work only a few hours of overtime each week; affected employees' tasks may not be easily divisible; and hiring new workers and/or managing different work flows will impose additional costs on the employer that will offset the savings from avoiding paying the overtime premium.

[136] Keller, S. M. (2009). Effects of Extended Work Shifts and Shift Work on Patient Safety, Productivity, and Employee Health. *AAOHN Journal,* 57(12), 497–502.

[137] Loeppke, R., Taitel, M., Richling, D., Parry, T., Kessler, R., Hymel, P., et al. (2007). Health and Productivity as a Business Strategy. *Journal of Occupational and Environmental Medicine,* 49(7), 712–721.

[138] Howes, Candace, (2005). Living Wages and Retention of Homecare Workers in San Francisco. *Industrial Relations,* 44(1), 139–163. Dube, A., Lester, T.W., & Reich, M. (2014). Minimum Wage Shocks, Employment Flows and Labor Market Frictions. IRLE Working Paper #149–13.

[139] Note that this literature tends to focus on changes in earnings for a specific sector or subset of the labor force. The impact on turnover when earnings increase across sectors (as would be the case with this regulation) may be smaller.

[140] Argote, L., Insko, C. A., Yovetich, N., & Romero, A. A. (1995). Group Learning Curves: The Effects of Turnover and Task Complexity on Group Performance. *Journal of Applied Social Psychology,* 25(6), 512–529.

Shaw, J. D. (2011). Turnover Rates and Organizational Performance: Review, Critique, and Research Agenda. *Organizational Psychology Review,* 1(3), 187–213.

[141] Akerlof, G. A. (1982). Labor Contracts as Partial Gift Exchange. *The Quarterly Journal of Economics,* 97(4), 543–569.

is complex and thus not estimated here. In order to conduct such an analysis, the Department would need estimates of the transfer per worker, his or her current income level, other sources of family income, number of family members, state of residence, and receipt of aid.

viii. Bounds on Transfer Payments

Because the Department cannot predict the precise reaction of employers to the proposed rule, the Department also calculated bounds to the size of the estimated transfers from employers to workers using a variety of assumptions. Since transfer payments are the largest component of this proposed rulemaking the scenarios considered here are bounds around the transfer estimate. Based on the assumptions made, these bounds do not generate bounded estimates for costs or DWL.

The maximum potential upper limit occurs with the assumption that the demand for labor is completely inelastic, and therefore neither the implicit regular hourly rate of pay nor hours worked adjust in response to the changes in the EAP standard salary level and HCE annual compensation level test. Employers then pay workers one and a half times their current implicit hourly rate of pay for all overtime hours currently worked (*i.e.,* the full overtime premium). The minimum potential lower bound occurs when wages adjust completely and weekly earnings are unchanged as predicted by the employment contract model. The Department believes that both the maximum upper bound scenario and the minimum lower bound scenario are unrealistic; therefore, we constructed more credible bounds.

For a more realistic upper bound on transfer payments, the Department assumed that all occasional overtime workers and half of regular overtime workers would receive the full overtime premium, as it was computed in the maximum upper bound methodology (*i.e.,* such workers would work the same number of hours but be paid 1.5 times their implicit initial hourly wage for all overtime hours). Conversely, in the preferred model we assumed that only 50 percent of occasional overtime workers and no regular overtime workers would receive the full overtime premium. It was assumed that employers could not instantaneously adjust earnings for the 50 percent of affected EAP workers who regularly work overtime. However, for the other half of regular overtime workers, the Department assumed they would have their implicit hourly wage adjusted as predicted by the partial employment contract model (wage rates fall and hours are reduced but total earnings continue to increase, as in the preferred method). Table 26 summarizes the assumptions described above.

The plausible lower transfer bound also depends on whether employees work regular overtime or occasional overtime. For those who regularly work overtime hours and half of those who work occasional overtime, the Department assumes the employees' wages will fully adjust as predicted by the employment contract model, whenever possible (in the preferred method their wages adjust based on the partial employment contract model).[142] For the other half of employees with occasional overtime hours, the lower bound assumes they will be paid one and one-half times their implicit hourly wage for overtime hours worked (full overtime premium).

TABLE 26—SUMMARY OF THE ASSUMPTIONS USED TO CALCULATE THE LOWER ESTIMATE, PREFERRED ESTIMATE, AND UPPER ESTIMATE OF TRANSFERS

Lower transfer estimate	Preferred estimate	Upper transfer estimate
Occasional Overtime Workers (Type 2)		
50% full employment contract model adj	50% partial employment contract model adj	100% full overtime premium.
50% full overtime premium	50% full overtime premium.	
Regular Overtime Workers (Type 3)		
100% full employment contract model adj	100% partial employment contract model adj ..	50% partial employment contract model adj 50% full overtime premium.

Legend:

* Full overtime premium: Regular rate of pay equals the implicit hourly wage prior to the proposed regulation (with no adjustments); workers are paid 1.5 times this base wage for the same number of overtime hours worked prior to the regulation (assuming the worker was paid the minimum wage, otherwise the wage increases to the minimum wage and overtime hours may decrease).

* Full employment contract model adjustment: Base wages are set at the higher of: (1) a rate such that total earnings and hours remain the same before and after the proposed regulation; thus the base wage falls, and workers are paid 1.5 times the new base wage for overtime hours (the employment contract model) or (2) the minimum wage.

* Partial employment contract model adjustment: Regular rates of pay are partially adjusted to the wage implied by the employment contract model. The resulting regular rate of pay is the midpoint of: (1) a base wage that adjusts 40 percent of the way to the employment contract model wage level, assuming no overtime premium was initially paid and (2) a base wage that adjusts 80 percent of the way to the employment contract model wage level, assuming the workers initially received a 28 percent premium for overtime hours worked.

The cost and transfer payment estimates associated with the bounds are presented in Table 27. Regulatory familiarization costs and adjustment costs do not vary across the scenarios. These employer costs are a function of the number of affected firms or affected workers, human resource personnel hourly wages, and time estimates. None of these vary based on the assumptions made above. Conversely, managerial costs are lower under these alternative employer response assumptions because fewer workers' hours are adjusted by employers and thus managerial costs, which depend on the number of workers whose hours change, will be smaller. Managerial costs vary according to employers' response to the proposed rule.

Depending on how employers adjust the implicit regular hourly wage, the estimated transfer may range from $543.7 million to $2,851.2 million, with the preferred estimate equal to $1,482.5 million. The DWL associated with the preferred estimate is $7.4 million. The

[142] The straight-time wage adjusts to a level that keeps weekly earnings constant when overtime hours are paid at 1.5 times the straight-time wage. In cases where adjusting the straight-time results in a wage less than the minimum wage, the straight-time wage is set to the minimum wage.

upper transfer estimate of DWL is smaller than the preferred estimate because the assumptions made for this upper bound scenario result in fewer hours lost. For the lower transfer estimate DWL was estimated to be less than $400,000; for the upper transfer estimate scenario the DWL was estimated to be $3.7 million.

TABLE 27—BOUNDS ON ANNUAL COST AND TRANSFER PAYMENT ESTIMATES, 2013 (MILLIONS)

Cost/transfer	Lower transfer estimate [a]	Preferred estimate	Upper transfer estimate
Direct employer costs.			
Reg. familiarization	$254.5	$254.5	$254.5
Adjustment costs	160.1	160.1	160.1
Managerial costs	1.7	178.1	82.8
Total direct employer costs	416.3	592.7	497.4
Transfers [a]	543.7	1,482.5	2,851.2
DWL	0.4	7.4	3.7

Note: Pooled data for 2011–2013.
[a] Due to both the minimum wage and overtime pay provisions and changes in both the standard salary level and the HCE compensation level.

ix. Regulatory Alternatives

The Department proposes in this NPRM to update the standard salary level to the 40th percentile of weekly earnings for all full-time salaried workers ($921 per week). The Department considered a range of alternatives before deciding on this level. Seven alternatives are presented here. Two of these (alternatives 1 and 7) inflate the value of earlier salary levels to take into account inflation in the intervening years. Three others (alternatives 2, 3, and 5) adapt the 2004 method or the Kantor method to set the salary level. Alternatives 4 and 6 set the salary level to the median weekly salary for either all full-time hourly and salaried workers or full-time salaried workers, respectively. Table 28 presents the alternative salary levels considered and the number of workers estimated to be affected under these salary levels.

Alternative 1 increases the 2004 salary level of $455 per week by the rate of inflation between 2004 and 2013 as measured by the CPI–U. This results in a salary level of $561 per week. At this salary level 576,000 workers would be affected in Year 1, imposing direct adjustment and managerial costs of $36.1 million, transferring $127.9 million in earnings from employers to employees, and resulting in DWL of $0.5 million.

Alternative 2 sets the salary level using the 2004 method resulting in a salary level of $577 per week. At this salary level 734,000 workers would be affected, Year 1 adjustment and managerial costs would equal $44.5 million, with transfers of $151.5 million, while DWL would equal $0.7 million.

Alternative 3 sets the salary level using the Kantor method. This results in a salary level of $657 per week. At this salary level, 1.4 million workers are affected, Year 1 adjustment and managerial costs are $91.8 million, Year 1 transfers are $318.6 million, and Year 1 DWL is $1.7 million.

Alternative 4 sets the salary level equal to the 50th percentile, or median, of weekly earnings for full-time hourly and salaried workers. This results in a salary level of $776 per week. At this salary level, 2.7 million workers would be affected in Year 1, employer costs would total $179.8 million with transfers of $686.6 million, and DWL would be $3.6 million.

Alternative 5 is based on the Kantor method but, whereas alternative 3 generates the salary level associated with the long duties test, alternative 5 generates a level more appropriate to the short duties test (as explained in section VII.C) and results in a salary level of $979 per week. At this salary level, 5.6 million workers would be affected in Year 1, with adjustment and managerial costs of $404.2 million, transfers of $1.8 billion, and DWL equal to $10.3 million. As previously noted, while this alternative uses the average difference between the Kantor long and short tests, the ratio of the short to long salary tests ranged between approximately 130 percent and 180, which would result in a salary between $854 and $1,183.

Alternative 6 sets the standard salary equal to the 50th percentile, or median, of weekly earnings for full-time salaried workers. This approach is similar to the proposed method but uses a higher weekly earnings percentile: 50th instead of the 40th. This results in a salary level of $1,065 per week. At this salary level, 6.9 million workers would be affected in Year 1, employer costs would total $522.1 million with transfers of $2.5 billion, and DWL would be $14.8 million.

Alternative 7 increases the 1975 short test salary level of $250 per week by the rate of inflation from 1975 to 2013. This results in a salary level of $1,083 per week. At this salary level, 7.1 million workers would be affected in Year 1, employer costs would total $543.0 million with transfers of $2.7 billion, and DWL would be $15.5 million.

The Department also examined alternatives to the proposed HCE compensation level. HCE alternative 1 left the current $100,000 annual compensation level unchanged. Therefore, no employer costs, transfers, or DWL are associated with this alternative.

HCE alternative 2 sets the HCE annual compensation level at $150,000 per year. This compensation level would affect 52,000 workers in Year 1 (compared to 36,000 at the proposed compensation level), impose adjustment and managerial costs on employers of $5.5 million, transfer $71.2 million in earnings from employers to employees, and generate $600,000 in DWL. Because regulatory familiarization costs cannot realistically be differentiated into those relevant to the standard salary level, and those relevant to the HCE compensation level, the Department does not separately estimate those costs for the HCE alternatives.

TABLE 28—PROPOSED STANDARD SALARY AND HCE COMPENSATION LEVELS AND ALTERNATIVES, AFFECTED EAP WORKERS, COSTS, AND TRANSFERS, 2013

Alternative	Salary level	Affected EAP workers (1,000s)	Year 1 impacts (Millions)		
			Adj. & managerial costs [a]	Transfers	DWL [b]
Standard Salary Level (Weekly)					
Proposed	$921	4,646	$334.8	$1,440.8	$7.2
Alt. #1: Inflate 2004 levels	561	576	36.1	127.9	0.5
Alt. #2: 2004 method	577	734	44.5	151.5	0.7
Alt. #3: Kantor method	657	1,390	91.8	318.6	1.7
Alt. #4: Median full-time hourly and salaried workers	776	2,704	179.8	686.6	3.6
Alt. #5: Kantor short test	979	5,632	404.2	1,821.3	10.3
Alt. #6: Median full-time salaried	1,065	6,855	522.1	2,525.8	14.8
Alt. #7: Inflate 1975 short test level	1,083	7,128	543.0	2,666.1	15.5
HCE Compensation Level (Annually)					
Proposed	$122,148	36	$3.3	$41.7	$0.0
Alt. #1: No change	100,000	0	.....	.....	.....
Alt. #2: 2004 percentile	150,000	52	5.5	71.2	0.6

Note: Pooled data for 2011–2013.
[a] Regulatory familiarization costs are excluded because they are a one-time cost that do not vary based on the proposed salary levels.
[b] DWL was estimated based on the aggregate impact of both the minimum wage and overtime pay provisions. Since the transfer associated with the minimum wage is negligible compared to the transfer associated with overtime pay, the vast majority of this cost is attributed to the overtime pay provision.

x. Projections

1. Methodology

In addition to estimating Year 1 costs and transfers, the Department projected costs and transfers forward for ten years. To project costs and transfers, the Department used several pieces of data, specifically the median wage growth rate and the employment growth rate. These calculations are described below, after which the ten-year projected costs and transfers are presented.

The projections presented in this section assume the proposed salary level remains constant over ten years. Thus, the number and percent of affected EAP workers decline over time as real earnings increase.[143] The section on automatic updating of the salary level will present the estimated ten-year impacts based on how real earnings change relative to an automatically updated salary level because the selection of the salary level is conceptually separate from the decision to update (and how to update) the salary level. Thus, the costs and impacts of each are considered and presented separately.

In order to identify workers whose projected salaries fall between the current salary level ($455 per week) and the proposed salary level based on the 40th earnings percentile ($921 per week), a wage growth rate must be applied to current earnings. The Department applied an annual real growth rate based on the average annual growth rate in median wages from 2005 to 2012.[144] The wage growth rate is calculated as the geometric growth rate in median wages using the historical CPS MORG data for exempt workers by occupation-industry categories. The geometric growth rate is the constant annual growth rate that when compounded (applied to the first year's wage, then to the resulting second year's wage, etc.) yields the last historical year's wage. This method only depends on the value of the wage in the first available year and the last available year, and may be a flawed measure if either or both of those years were atypical; however, in this instance these values seem typical.

An alternative method would be to use the time series of median wage data to estimate the linear trend in the values and continue this to project future median wages. This method may be preferred if either or both of the endpoint years are outliers, since the trend will be less influenced by them. The linear trend may be flawed if there are outliers in the interim years (because these have no impact on the geometric mean but will influence the estimate of a linear trend). The Department chose to use the geometric mean because individual year fluctuations are difficult to predict and applying the geometric growth rate to each year provides a better estimate of the long-term growth in wages. Using this method is also consistent with the estimation of the employment growth rate as described below.

The geometric wage growth rate was also calculated from the BLS' Occupational Employment Statistics (OES) and used as a validity check.[145] Additionally, in occupation-industry categories where the CPS MORG data had an insufficient number of observations to reliably calculate median wages, the Department used the growth rate in median wages calculated from the OES data.[146] Any remaining occupation-industry combinations without estimated median growth rates were assigned the median of the growth rates in median wages from the CPS MORG data for EAP exempt workers.

[143] As described in the following paragraphs, the Department used historical wage growth rates to project wage growth rates.

[144] In order to maximize the number of observations used in calculating the median wage for each occupation-industry group, three years of data were pooled for each of the endpoint years. Specifically, data from 2004, 2005, and 2006 (converted to 2005 dollars) were used to calculate the 2005 median wage and data from 2011, 2012, and 2013 (converted to 2012 dollars) were used to calculate the 2012 median wage.

[145] The difference between the OES and CPS growth measures averaged −0.0002 percent, but ranged from −7.2 to 5.8 percent, depending on the occupation-industry category. The CPS growth estimates were used as the primary source because the sample could be restricted to EAP exempt workers (the relevant population).

[146] To lessen small sample bias in the estimation of the median growth rate, this rate was only calculated using CPS MORG data when these data contained at least 10 observations in each time period.

The Department calculated projected earnings for each worker in the sample by applying the annual projected wage growth rate to current earnings for each projected year. In each projected year, affected EAP workers were identified as those who are exempt in the current year (prior to the rule change) but have projected earnings in the projected year that are less than the proposed salary level.

The employment growth rate is the geometric annual growth rate based on the ten-year employment projection from BLS' National Employment Matrix (NEM) within an occupation-industry category. This is the constant annual growth rate that when compounded yields the NEM ten-year projection. An alternative method is to spread the total change in the level of employment over the ten years evenly across years (constant change in the number employed). The Department believes that on average employment is more likely to grow at a constant percentage rate rather than by a constant level (a decreasing percentage rate). To account for population growth, the Department applied the growth rates to the sample weights of the workers. This is because the Department cannot introduce new observations to the CPS MORG data to represent the newly employed.

Affected EAP workers may experience a reduction in hours since the wage they receive for overtime hours is higher after the proposed rulemaking. The reduction in hours is calculated as described in section VII.D.v. The only difference is that for projections the long-run elasticity of labor demand is used instead of the short-run elasticity. The Department used a long-run elasticity of -0.4.[147]

2. Estimated Projections

Projected costs and transfers both depend on the projected number of affected EAP workers. The Department estimated that in Year 1 4.7 million EAP workers will be affected, with about 36,000 of these attributable to the revised HCE compensation level. In Year 10, if the salary levels are not updated, the number of affected EAP workers was estimated to equal 2.7 million, with fewer than 8,000 attributed to the HCE exemption. The projected number of affected EAP workers accounts for projected employment growth by increasing the number of workers represented by the affected EAP workers (*i.e.,* increasing sampling weights). However, with no additional changes in the salary level and most workers experiencing positive wage growth, workers affected in Year 1 become less likely to still be affected in each future year. That is, some of these workers return to exempt status over time as their growing salaries eventually exceed the proposed standard salary level of $921 per week. The net impact is a decrease in the number of affected EAP workers in each subsequent year.

The projected number of affected workers only includes workers who were originally determined to be exempt in 2013. However, additional workers may be affected in future years who were not EAP exempt in the base year but would have become exempt in the absence of this proposed rule. For example, a worker may earn less than $455 in 2013 but at least $455 (and less than the proposed salary level) in subsequent years; such a worker would not be counted as an affected worker in the projections above. In the absence of this proposed rule he or she would likely have become exempt at some point in the 10-year projections period; however, as a result of the proposed rule, this worker remains nonexempt, and is thus affected by the proposed rule.

Therefore, the Department estimated the number of workers who were: Paid on a salary basis, pass the duties test, and earn less than $455 per week in 2013, but are projected to earn at least $455 (but less than the proposed salary level) per week at some point in the following nine years. The Department found that in Year 10, an additional 398,000 workers meet these criteria and therefore are also affected workers. Similarly, the Department estimated the number of workers who are paid on a salary basis, meet the HCE duties test, and currently earn less than $100,000 annually but are projected to earn more than $100,000 per year at some point in the following nine years. The Department estimated that, in Year 10, an additional 115,000 workers meet these criteria and therefore are also affected workers. The Department did not estimate costs, transfers, or DWL for these workers because it would be necessary to make additional assumptions such as how employers respond by adjusting workers' wages and hours.

The Department quantified three types of direct employer costs in the ten-year projections: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Regulatory familiarization costs are one-time costs and only occur in Year 1. Although start-up firms must still become familiar with the FLSA following Year 1, the difference between the time necessary for familiarization with the current part 541 exemptions and those exemptions as modified by the proposed rule is essentially zero. Therefore, projected regulatory familiarization costs over the next nine years are zero. Similarly, adjustment costs are only incurred when workers' status changes from exempt to nonexempt, so adjustment costs are incurred predominately in Year 1 (some very minor adjustment costs may exist in projected years because some workers' earnings decrease and thus these workers may transition from exempt to nonexempt).

However, managerial costs recur for all affected EAP workers whose hours are adjusted and were projected through Year 10. The Department estimated that Year 1 managerial costs would be $178.1 million (section VII.D.iv.4.); by Year 10 these costs would fall to $93.1 million (Table 29). Over 97 percent of this amount ($176.0 million) in Year 1, and roughly 99 percent ($92.6 million) in Year 10 is attributable to the revised standard salary level. The projected reduction in managerial costs over the years is due to the reduction in the number of affected EAP workers over time as workers' earnings increase relative to the constant salary and compensation levels.

The Department also projected two transfers associated with workers affected by the proposed regulation: (1) Transfers to workers from employers due to the minimum wage provision and (2) transfers to workers from employers due to the overtime pay provision. Transfers to workers from employers due to the minimum wage provision, estimated to be $46.7 million in Year 1, are projected to decline to $9.9 million in Year 10 as increased earnings over time move workers' regular rate of pay above the minimum wage.[148] Transfers to workers from employers due to the overtime pay provision decrease from $1,435.8 million in Year 1 to $490.2 million in Year 10. Workers affected by the revised standard salary level account for 97 percent of overtime transfers in Year 1, and 99 percent in Year 10. Again, the decrease in transfers is primarily due to the reduction in the number of affected workers over time.

Table 29 also summarizes average annualized costs and transfers over the ten-year projection period, using 3

[147] This elasticity estimate is based on the Department's analysis of the following paper: Lichter, A., Peichl, A. & Siegloch, A. (2014). The Own-Wage Elasticity of Labor Demand: A Meta-Regression Analysis. IZA DP No. 7958.

[148] In states with higher minimum wages, then effective state minimum wages were used in 2013 and 2014 and minimum wages on December 31, 2014 were used for projected years.

percent and 7 percent real discount rates. The Department estimated that total direct employer costs have an average annualized value of $194.2 million per year over ten years when using a 7 percent real discount rate. Of this total, average annualized regulatory familiarization costs were estimated to be $33.9 million; the Department does not apportion these out between the revised standard salary and HCE annual compensation levels. Average annualized adjustment costs were estimated to be $21.5 million; roughly 99 percent of adjustment costs were attributed to the revised standard salary level. The remaining $138.9 million in average annualized direct costs were accounted for by managerial costs, of which 99 percent were associated with the revised standard salary level.

The average annualized value of total transfers was estimated to equal $872.9 million. The largest component of this was the average annualized transfer from employers to workers due to overtime pay, which was $843.6 million per year, while average annualized transfers due to the minimum wage totaled $29.3 million per year. None of the transfer associated with the minimum wage was attributed to the revised HCE compensation level. Although composing less than one percent of affected workers, those receiving overtime due to the revised HCE compensation level account for 2.2 percent of total average annualized transfers ($19.5 of $872.9 million) because of their high implicit regular hourly rate of pay. The remaining $853.4 million in transfers accrue to those affected by the revised standard salary level.

TABLE 29—PROJECTED COSTS AND TRANSFERS WITHOUT AUTOMATIC UPDATING, STANDARD AND HCE SALARY LEVELS

Year (Year #)	Affected EAP workers (Millions)	Costs			Transfers		DWL [a]
		Reg. Fam.	Adjustment	Managerial	Due to MW	Due to OT	
		(Millions 2013$)					
Year							
2013 (1)	4.7	$254.5	$160.1	$178.1	$46.7	$1,435.8	$7.4
2014 (2)	4.5	0.0	1.1	169.0	44.0	1,017.1	9.8
2015 (3)	4.2	0.0	0.0	155.8	39.5	923.9	8.9
2016 (4)	4.0	0.0	0.0	146.1	33.0	843.1	8.1
2017 (5)	3.8	0.0	0.0	137.5	27.4	771.4	7.5
2018 (6)	3.6	0.0	0.0	128.5	22.6	702.0	6.8
2019 (7)	3.4	0.0	0.0	118.4	18.3	640.1	6.0
2020 (8)	3.1	0.0	0.0	108.9	14.9	582.0	5.3
2021 (9)	2.9	0.0	0.0	100.6	11.8	539.2	4.9
2022 (10)	2.7	0.0	0.1	93.1	9.9	490.2	4.3
Average Annualized							
3% real rate	.....	29.0	18.4	135.9	27.9	815.7	7.0
7% real rate	.....	33.9	21.5	138.9	29.3	843.6	7.2

[a] DWL was estimated based on the aggregate impact of both the minimum wage and overtime pay provisions. Since the transfer associated with the minimum wage is negligible compared to the transfer associated with overtime pay, the vast majority of this cost is attributed to the overtime pay provision.

The cost to society of lower employment expressed as DWL was estimated to be $7.4 million in Year 1. After year 2, DWL falls over time; in Year 10 it is projected to equal $4.3 million. DWL increases sharply between Year 1 and Year 2 because the Department assumes the market has had time to fully adjust to the revised standard salary and HCE annual compensation levels by Year 2. In Year 1 employers may not be able to fully adjust wages and hours in response to the rulemaking, so the Department used a short run wage elasticity of labor demand to reflect this constrained response; in Year 2 employers have sufficient time to fully adjust, and a long run wage elasticity is used. Therefore, the decrease in hours worked is larger in Year 2 than Year 1, and the DWL is also larger. Finally, the Department estimated that average annualized DWL was $7.2 million per year; about $200,000 of DWL (2.7 percent) was attributed to affected HCE workers, and the remaining $7.0 million was attributed to workers affected by the revised standard salary level.

A summary of the estimates used in calculating DWL for years 1, 2 and 10 is presented in Table 30. The size of the DWL depends on the change in average hourly wages, the change in average hours, and the number of affected EAP workers. While the change in average hourly wages generally tends to increase over time in the projected years, the number of affected EAP workers decreases over time; because the relative decrease in workers is larger than the relative increase in wages after Year 2, there is a net decrease in annual DWL over time.

TABLE 30—SUMMARY OF PROJECTED DEADWEIGHT LOSS COMPONENT VALUES

Component	Year 1	Future years	
		Year 2	Year 10
	Standard		
Average hourly wages			
Pre	$15.01	$15.09	$15.47
Post [a]	$15.70	$15.59	$15.98
Change	$0.68	$0.50	$0.51
Change in average overtime hours	−0.40	−0.77	−0.75
Affected EAP workers (1,000s)	1,010	959	532
DWL			
Per worker per week	$0.14	$0.19	$0.19
Nominal annual (millions)	$7.2	$9.7	$5.3
Real annual (millions of 2013$)	$7.2	$9.4	$4.3
		HCE	
Average hourly wages			
Pre	$40.31	$40.48	$46.19
Post [a]	$42.45	$41.96	$47.67
Change	$2.14	$1.48	$1.47
Change in average overtime hours	−0.41	−0.80	−0.62
Affected EAP workers (1,000s)	12	11	3
DWL			
Per worker per week	$0.44	$0.59	$0.46
Nominal annual (millions)	$0.27	$0.34	$0.07
Real annual (millions of 2013$)	$0.27	$0.34	$0.07

Note: DWL analysis is limited to workers in Types 2 and 3 who experience hour adjustments.
[a] Despite general growth in wages, the average wage may fall slightly from Year 1 to Year 2 because the population has changed.

In conclusion, because the number of affected EAP workers and consequently all costs and transfers diminish over time, the economic impact of the regulation will decrease over time as the real value of the salary levels fall. This occurs because real wages increase over time while the proposed salary levels would remain constant without automatic updating. However, if the salary levels are annually updated, the projected costs and transfers would increase over time. Cost and transfer projections based on the proposed standard salary level with annual updates are examined in section VII.E.iii.

E. Automatic Updates

i. Background

Between periodic updates to the salary level, nominal wages typically increase, resulting in an increase in the number of workers qualifying for the EAP exemption even if there has been no change in their duties or real earnings. Thus, workers whom Congress intended to be covered by the minimum wage and overtime pay provisions of the FLSA lose that protection. Automatically updating the salary level would allow the level to keep pace with changes in either prices or earnings, keeping the real value of the salary level constant over time.

The Department proposes to include in the regulations a mechanism for automatically updating the proposed standard salary level and proposed HCE annual compensation level annually either by maintaining a fixed percentile of earnings (40th and 90th percentile of weekly wages for full-time salaried workers, respectively) or by updating the salary and compensation levels based on changes in the CPI–U. Automatically updating the EAP standard salary level and HCE compensation level would allow these levels to continue to serve as an effective dividing line between potentially exempt and nonexempt workers.

Furthermore, automatically updating the standard salary level and HCE compensation level would provide employers more certainty in knowing that the salary and compensation levels would change by a small amount each year, rather than the more disruptive increases caused by much larger changes after longer, uncertain increments of time. This would allow firms to better predict short- and long-term costs and employment needs.

ii. Automatic Updating Methods

1. Introduction

There are many indices that could be used to adjust the salary levels. In general, these indices are classified into two groups: Price indices and earnings indices.

Price indices are normalized averages of prices used to measure the change in the average level of prices in an economy over time. The general growth rate of prices, also known as the inflation rate, is calculated as the annual percentage increase in the average price level. A price index is intended to measure the cost of achieving a given level of economic well-being or utility.[149] Because one cannot directly observe utility or well-being, a ''market basket'' of goods and services is selected to represent a given level of utility. By keeping the contents of this basket constant, one can approximate the cost of obtaining the same level of utility at different points in time. In order to keep utility or the cost-of-living constant, incomes must rise by the same amount as the price index.

An alternative to indexing the salary level to a price level is to update the salary level based upon an earnings measure. Price indices are intended to keep a consumer's utility constant by adjusting for changes in the cost of living due to inflation. However, while price indices account for changes to the price of products in the market basket, they may not reflect the real growth in

[149] Nordhaus, W.D. (1998). Quality Change in Price Indexes. *Journal of Economic Perspectives,* 12(1), 59–68.

wages, growth that might result in the ability to purchase a larger ''market basket.'' Updating the salary level by maintaining it at a fixed percentile of earnings would reflect real growth in wages and keep the percentage of workers exempt roughly constant over time, but may not fully account for inflation in all circumstances.

2. Updating Methods Considered

This section details the price and earnings indices that were considered as methods to update the salary levels. The Department assessed each method's strengths, weaknesses, and current use. The methods considered include:

- Consumer Price Index for all urban consumers (CPI–U)
- Chained CPI (C–CPI–U)
- Earnings percentiles (fixed percentiles of the distribution of weekly earnings for full-time salaried workers)

The CPI–U

The CPI–U is the most commonly used price index in the U.S. and is calculated monthly by BLS. The CPI–U holds quantities constant at base levels while allowing prices to change. The quantities are fixed to represent a ''basket of goods and services'' bought by the average consumer. However, most economists believe that the CPI–U overestimates the rate of inflation, although there are a broad range of views as to the sources and size of the overestimate. CPI–U estimates are generally not subject to revision.

The CPI–U is the primary index used by the government to index benefit payments, program eligibility levels, and tax payments, including:

- Federal income tax brackets, personal exemptions, and standard deductions.[150]
- Both eligibility for and benefits under the Earned Income Tax Credit (EITC).[151]
- Funding allocated to some government grants, such as funding to the Nutrition Education and Obesity Prevention Grant Program.[152]
- Treasury inflation-indexed debt securities' interest rates.[153]
- Many government programs' income eligibility requirements, including school meal programs.[154]
- Federal poverty levels, which determine eligibility for many government social assistance programs.[155]

[150] 26 U.S.C. 1(f).

[151] *Id.*

[152] 7 U.S.C. 2036a(d)(1)(F).

[153] 31 CFR part 456, appendix D.

[154] 42 U.S.C. 1758(b)(1).

[155] 42 U.S.C. 9902(2).

The Chained CPI–U (C–CPI–U)

The C–CPI–U is a variation of the CPI–U. The C–CPI–U is an index that accounts for changes in the market basket of goods from one year to the next. The C–CPI–U results in inflation estimates roughly 0.3 percentage points lower than the CPI–U.[156]

Although the C–CPI–U is viewed by some as a more accurate measure of inflation than the CPI–U, it has shortcomings as an indexation method. ''The C–CPI–U requires data on changes in consumers' spending patterns. Since those data are not available for several years the BLS releases preliminary estimates of the C–CPI–U and revises them over the following two years.'' [157] Thus any measure using the C–CPI–U would have to be either (1) indexed to a preliminary estimate of the C–CPI–U that is subject to estimation error and revision or (2) indexed to changes in prices from a few years prior.

Earnings percentiles (fixed percentiles of the distribution of weekly earnings for full-time salaried workers)

Updating the salary levels based upon the growth rate of earnings at a specified percentile of the earnings distribution is consistent with the Department's historical practice of using salary level as a key criterion for the exemption. The growth rate of earnings reflecting labor market conditions is an appropriate measure of the relative status, responsibility, and independence that characterize exempt workers.

While earnings and prices generally mirror one another over time, they do not change in tandem. A price index maintains a constant level of utility or economic well-being; an earnings index reflects real gains in the standard of living. Accordingly, if earnings grow more quickly than prices an earnings index will increase the salary levels by more than a price index. Conversely, if prices grow more quickly than earnings a price index will increase the salary levels more than an earnings index.

3. Comparison of Indices

The Department proposes to automatically update the standard salary level and the HCE annual compensation level annually either by maintaining them at a fixed percentile of earnings (the 40th and 90th percentiles of weekly wages for full-time salaried workers, respectively) or by updating the levels based on changes in the CPI–U. Updating salary and compensation levels based on earnings would keep the share of workers who are exempt fairly constant over time, while updating based on prices will keep the earnings power of the levels constant over time.

The Department is seeking detailed comments on both methods of updating the standard salary and HCE compensation levels. The CPI–U is based on a tremendous amount of data that represents average prices paid by a majority of Americans and is by far the best-known and most widely-used index. While earnings percentiles are less familiar, BLS publishes the deciles of weekly earnings for full-time salaried workers on a quarterly basis. In recent years the CPI–U has grown at a rate very closely aligned with the 40th percentile of earnings for full-time salaried workers; between 2003 and 2013 the average annual growth rates for the 40th percentile and CPI–U have been: 2.6 percent and 2.4 percent respectively. The Department therefore expects that both methods would produce similar standard salary levels in future years. Growth in CPI–U in recent years has been smaller than growth at the 90th percentile of earnings, however, so the HCE total annual compensation levels generated by these two methods may vary in the future.

iii. Estimated Impacts of Automatically Updating the EAP Salary and HCE Compensation Levels

In section VII.D.x. the Department projected ten years of costs and transfers due to a one-time increase in the standard salary and HCE compensation levels. Updating these salary levels annually will increase the number of affected workers because more workers will earn below the higher indexed salary levels than the fixed salary levels. Consequently, the projected costs and transfers of the proposed rule will increase with indexation.

In this section, the Department describes and quantifies the annual costs and transfer payments associated with automatically updating the salary levels under both methods (fixed percentile and CPI–U). To predict the salary and compensation levels in 2014 through 2022 using the fixed percentile method, the Department estimated the salary levels using data from 2003 through 2013, calculated the geometric average annual growth rate, and applied it to the future years. For example, between 2003 and 2013 the 40th percentile of earnings for full-time salaried workers increased by an average of 2.6 percent annually; therefore, the projected salary level for Year 2 is $945 ($921 × 1.026). For the

[156] Congressional Budget Office. (2010). Using a Different Measure of Inflation for Indexing Federal Programs and the Tax Code. *http://www.cbo.gov/publication/25036.*

[157] *See http://www.bls.gov/cpi/cpisupqa.htm.*

CPI–U method, the Department used the predicted annual CPI–U values for 2014 through 2022 from the Congressional Budget Office.[158] For example, CPI–U for 2014 is predicted to be 1.5 percent; therefore, the projected salary level for Year 2 is $935 ($921 × 1.015). In other years, predicted CPI–U ranges from 1.9 percent to 2.4 percent.

As the required salary levels are updated in Year 2 through Year 10 of the analysis, more workers will potentially be affected with automatic updating than without. With automatic updating of the salary levels, the number of affected EAP workers is projected to increase from 4.7 million to between 5.1 and 5.6 million over 10 years, depending on the updating methodology used. Conversely, in the absence of automatic updating, the number of affected EAP workers is projected to decline from 4.7 to 2.7 million (Table 31). The relatively constant number of affected workers over the years with updating validates the choice of indexing methods. Starting in Year 1 and running through Year 10 the population of affected workers as a percent of potentially affected workers (defined using the current salary level) increases modestly from 21.9 to 23.4 percent using the fixed percentile method, but declines modestly to 21.2 percent using the CPI–U method.

The three costs to employers previously considered are (1) regulatory familiarization costs, (2) adjustment costs, and (3) managerial costs. Regulatory familiarization costs only occur in Year 1 and thus do not vary with automatic updating. Adjustment costs and managerial costs are a function of the number of affected EAP workers and so will be higher with automatic updating. Adjustment costs will occur in projected years when workers are newly affected (which—while relatively rare—will be more common with automatic updating than without). Management costs recur each year for all affected EAP workers whose hours are adjusted. Therefore, managerial costs fall significantly over time without updating (since the number of affected EAP workers decreases over time) but increase modestly over time with annual updating (where the number of affected EAP workers increases over time because of the higher salary level). Similarly, transfers and DWL will both be higher with automatic updating than without because the number of affected workers will increase, rather than decrease, over time.

Table 31 presents the projected estimated costs, transfer payments, and DWL with and without automatic updating. Total direct costs were projected to decrease from $592.7 million in Year 1 to $225.3 million in Year 10 with fixed percentile updating and to $198.6 million in Year 10 with CPI–U updating. In the absence of automatic updating, costs were projected to decrease to $93.1 million in Year 10. Transfers from employers to employees were projected to decrease from $1,482.5 million to $1,339.6 million using the fixed percentile method, and to $1,191.4 million using the CPI–U method. Without updating, transfers were projected to decrease to $500.1 million in Year 10. DWL increases over time with automatic updating, but decreases over time without it. With updating, DWL was estimated to increase from $7.4 million to $11.2 million (fixed percentile method) or to $9.7 million (CPI–U method), but decline from $7.4 million to $4.3 million without updating.

TABLE 31—PROJECTED COSTS AND TRANSFERS; STANDARD AND HCE SALARY LEVELS, WITH AND WITHOUT AUTOMATIC UPDATING

Automatic updating method[a]	Year						
	1	2	3	. . .	8	9	10
Affected Workers (Millions)							
Without	4.7	4.5	4.2	. . .	3.1	2.9	2.7
Percentile	4.7	4.8	4.9	. . .	5.4	5.5	5.6
CPI–U	4.7	4.7	4.7	. . .	4.9	5.0	5.1
Total Direct Employer Costs (Millions 2013$)							
Without	$592.7	$170.0	$155.8	. . .	$108.9	$100.6	$93.1
Percentile	592.7	188.8	191.9	. . .	214.8	220.1	225.3
CPI–U	592.7	181.1	178.6	. . .	191.6	195.2	198.6
Total Transfers (Millions 2013$)							
Without	$1,482.5	$1,061.2	$963.4	. . .	$596.9	$551.0	$500.1
Percentile	1,482.5	1,160.2	1,162.4	. . .	1,315.2	1,320.6	1,339.6
CPI–U	1,482.5	1,126.4	1,104.3	. . .	1,150.6	1,192.7	1,191.4
DWL (Millions 2013$)							
Without	$7.4	$9.8	$8.9	. . .	$5.3	$4.9	$4.3
Percentile	7.4	10.8	10.9	. . .	11.0	11.1	11.2
CPI–U	7.4	10.3	10.1	. . .	9.7	9.7	9.7

Note: For the purposes of projecting costs, transfers, and DWL, Year 1 corresponds to 2013 and Year 10 corresponds to 2022.

[a] The percentile method sets the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers and the HCE compensation level at the 90th percentile. The CPI–U method adjusts both salary levels based on the annual percent change in the CPI–U.

[158] Congressional Budget Office. (2014). The Budget and Economic Outlook: 2014 to 2024. Pub. No. 4869. Table G–2.

In Years 1 through 10, using a 7 percent real discount rate, total annualized adjustment and managerial costs were estimated to average between $205.7 and $221.4 million per year with automatic updating (using CPI–U or fixed percentile, respectively) and $160.3 million without updating (Table 32). Therefore, the incremental average annualized direct employer costs of automatic updating is between $45.4 and $61.1 million per year. Average annualized total transfers were estimated to be between $1,178.0 and $1,271.4 million with automatic updating (using CPI–U or fixed percentile, respectively) and $872.9 million without updating, resulting in incremental transfers of between $305.2 and $398.5 million per year. Projected average annualized DWL totals between $9.5 and $10.5 million per year with automatic updating (using CPI–U or fixed percentile, respectively) and $7.2 million per year without updating. Thus, automatic updating increases DWL by between $2.3 and $3.3 million per year on average. Benefits were not monetized for either Year 1 or Years 2 through 10; therefore this section does not repeat the previous discussion on potential benefits.

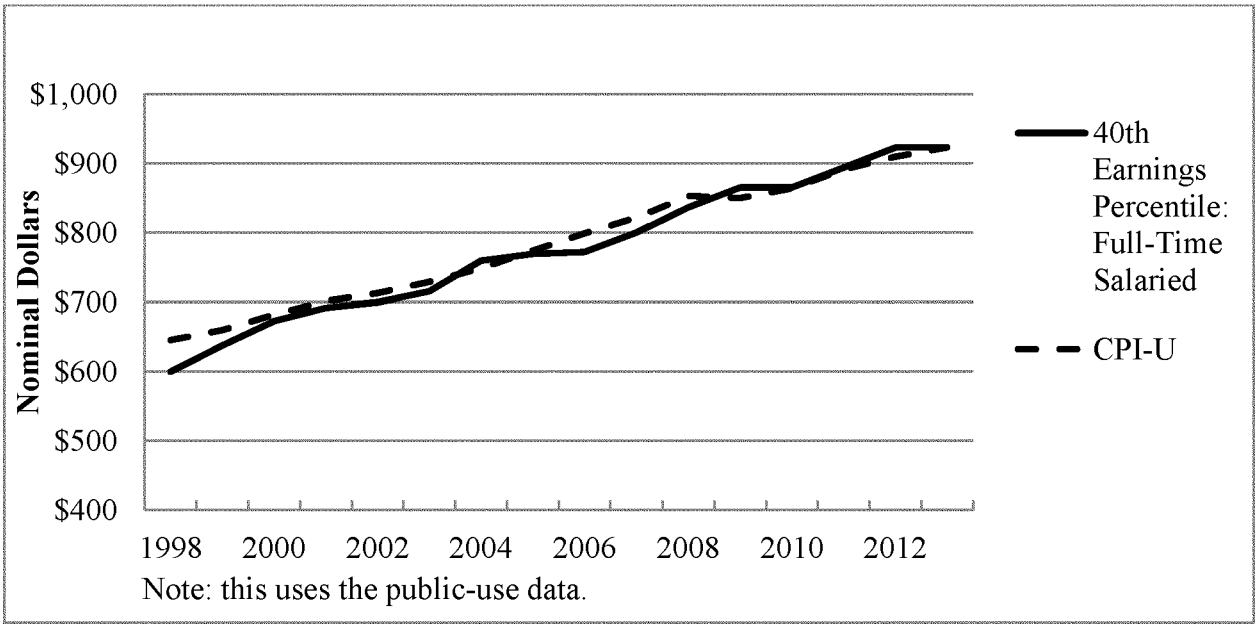
TABLE 32—SUMMARY OF TEN-YEAR AVERAGE ANNUALIZED REGULATORY COSTS AND TRANSFERS, STANDARD AND HCE SALARY LEVELS, WITH AND WITHOUT AUTOMATIC UPDATING

Cost/transfer	Average annualized values (Millions 2013$) [a]				
	Without updating	Fixed percentile		CPI–U	
		Values	Difference	Values	Difference
Regulatory Familiarization Costs					
Regulatory familiarization [b]	$33.9	$33.9	$0.0	$33.9	$0.0
Standard Salary Level					
Adj. & managerial costs	$158.7	$218.6	$59.9	$203.3	$44.6
Transfers	853.4	1,232.4	379.1	1,144.2	290.8
DWL	7.0	10.0	3.0	9.2	2.2
HCE Compensation Level					
Adj. & managerial costs	$1.7	$2.9	$1.2	$2.4	$0.8
Transfers	19.5	39.0	19.5	33.8	14.3
DWL	0.2	0.5	0.3	0.3	0.2
Total					
Adj. & managerial costs	$160.3	$221.4	$61.1	$205.7	$45.4
Transfers	872.9	1,271.4	398.5	1,178.0	305.2
DWL	7.2	10.5	3.3	9.5	2.3

[a] Over ten years, using a discount rate of 7 percent.
[b] Regulatory familiarization costs are a one-time cost that do not vary based on the proposed salary levels or automatic updating.

The above table demonstrates that the two updating methods yield similar costs and transfers estimates. However, this does not imply these indices will necessarily result in similar salary levels over time. The Department compared the standard salary levels that would have resulted from 1998 to 2013 if (1) the standard salary level was set each year to the 40th percentile of weekly earnings for full-time salaried workers, and (2) the standard salary level was set using the growth in the CPI–U (and setting the level in 2013 to match the 40th percentile earnings level, *i.e.,* $921 per week) (Figure 5). While not identical, the data show that during this sixteen year period these two methods produced similar results.

Figure 5: Proposed Standard Salary Level with Automatic Updating, 1998-2013



F. Duties Test

The Department has not proposed specific revisions to the standard duties tests; however, as mentioned in section III., we received significant input regarding this issue from both employer and employee representatives during the Department's stakeholder listening sessions. If changes were made to the standard duties tests, the Department would need to consider whether any of the probabilities of exemption for specific occupations used in the analysis would need to be revised since the new duties test would potentially result in workers in some occupations being more or less likely to meet the duties tests.

The Department has begun to consider whether O*NET can be used to identify any occupations for which the Department may need to adjust its assumptions of the likelihood of exemption should the Department revise the duties test. The O*NET database contains information on hundreds of standardized and occupation-specific descriptors. The database, which is available to the public, is continually updated by surveying a broad range of workers from each occupation. The database of occupational requirements and worker attributes describes occupations in terms of the skills and knowledge required, how the work is performed, and typical work settings.[159]

For each occupation, O*NET includes a list of tasks performed, and rates the tasks' frequency, importance, relevance, and whether it is a core or supplemental task. O*NET also includes data on work activities, including the importance, relevancy, and frequency of specified tasks performed in each occupation. This information could inform the Department in determining whether the task is indicative of exempt duties.

The Department believes it could use O*NET data to construct a model to identify occupations for which the probability of exemption would be impacted by any changes to the duties tests. The Department also could look to O*NET data to determine changes to the probability codes for those identified occupations. Therefore, if there are any changes to the duties test, the Department would likely update its estimate of the impact of the rule based on its analysis of the O*NET data for any occupations for which the probability codes were modified.

The Department invites detailed comments on this proposed methodology and alternative data sources for determining the impact of any changes to the standard duties tests.

Appendix A: Methodology for Estimating Exemption Status

The number of workers exempt under the FLSA's part 541 regulations is unknown. It is neither reported by employers to any central agency nor asked in either an employee or establishment survey. The Department estimated the number of exempt workers using the following methodology. This methodology is based largely on the approach used during the 2004 revisions.[160] This appendix expands on the methodology description in this NPRM. The methodology explained there is not repeated here unless additional details are provided.

A.1 The Duties Tests Probability Codes

The CPS MORG data do not include information about job duties. To determine whether a worker meets the duties test the Department again employs the methodology it used in the 2004 Final Rule. Each occupation is assigned a probability representing the odds that a worker in that occupation would pass the duties test. For the EAP duties test, the five probability intervals are:

- Category 0: Occupations not likely to include any workers eligible for the EAP exemptions.
- Category 1: Occupations with probabilities between 90 and 100 percent.
- Category 2: Occupations with probabilities between 50 and 90 percent.
- Category 3: Occupations with probabilities between 10 and 50 percent.
- Category 4: Occupations with probabilities between 0 and 10 percent.[161]

The occupations identified in this classification system represent an earlier occupational classification scheme (the 1990 Census Codes). Therefore, an occupational crosswalk was used to map the previous occupational codes to

[159] *See http://www.onetcenter.org/overview.html.*

[160] 69 FR 22196–22209 (Apr. 23, 2004).

[161] Table A2 lists the probability codes by occupation used to estimate exemption status.

the 2002 Census Occupational Codes which are used in the CPS MORG 2002 through 2010 data.[162] [163] When the new occupational category was comprised of more than one previous occupation, the Department assigned a probability category using the weighted average of the previous occupations' probabilities, rounded to the closest category code.

Next, the Department must determine which workers to classify as exempt.[164] For example, the probability codes indicate that out of every ten public relation managers between five and nine are exempt; however, the Department does not know which five to nine workers are exempt. Exemption status could be randomly assigned but this would bias the earnings of exempt workers downward, since higher paid workers are more likely to perform the required duties. Therefore, the probability of being classified as exempt should increase with earnings. First, the Department assigned the upper bound of the probability range in each exemption category to workers with top-coded weekly earnings. For all other white collar salaried workers earning at least $455 per week in each exemption category, the Department estimated the probability of exemption for each worker in the data based on both occupation and earnings using a gamma distribution.[165] [166] For the gamma distribution, the shape parameter alpha was set to the squared quotient of the sample mean divided by the sample standard deviation, and the scale parameter beta was set to the sample variance divided by the sample mean. These parameter calculations are based on the method described in the 2004 rulemaking, except for the use of the standard deviation instead of the standard error.[167] Table A1 shows that the expected number of workers exempt using a gamma distribution method is similar to the expected number exempt when assigning the midpoint of each probability code range to all workers in that probability code. After determining the probabilities of exemption for each worker in the data (dependent on both occupation and earnings), the Department randomly assigns exemption status to each worker, conditional on the worker's probability of exemption.

TABLE A1—COMPARISON OF PART 541—EXEMPT WORKER ESTIMATES [a]

Probability code category	Midpoint probability estimate	Gamma distribution model estimate
High probability of exemption (1)	21,947,066	22,014,576
Probably exempt (2)	4,557,146	4,573,895
Probably not exempt (3)	1,617,632	1,605,096
Low or no probability of exemption (4)	281,382	297,336
Total	28,403,227	28,490,903

[a] Numbers shown are the expected value of the number of workers exempt in each of the four probability code categories.

The 2004 Final Rule assigned probabilities for whether workers in each occupation would pass the HCE abbreviated duties test if they earned $100,000 or more in total annual compensation; these probabilities are:

- Category 0: Occupations not likely to include any workers eligible for the HCE exemption.
- Category 1: Occupations with a probability of 100 percent.
- Category 2: Occupations with probabilities between 94 and 96 percent.
- Category 3: Occupations with probabilities between 58.4 and 60 percent.
- Category 4: Occupations with a probability 15 percent.

Like under the standard test, there is a positive relationship between earnings and exemption status; however, unlike the standard test, the relationship for the HCE analysis can be represented well with a linear function. Once individual probabilities are determined, workers are randomly assigned to exemption status.

A.2 Other Exemptions

There are many other exemptions to the minimum wage and overtime pay provisions of the FLSA. Accordingly, in the 2004 Final Rule, the Department excluded workers in agriculture and certain transportation occupations from the analysis. The Department now is, in addition, estimating those workers who fall under one of the other exemptions in section 13(a) of the FLSA, because such workers are exempt from both minimum wage and overtime pay under the relevant section and would remain exempt regardless of any changes to the EAP exemption. In fact, many of the workers estimated below as falling within one of the section 13(a) exemptions will already have been excluded from the analysis because they are paid on an hourly basis or are in a blue collar occupation. The methodology for identifying the workers who fall under the section 13(a) exemptions is explained here and is based generally on the methodology the Department used in 1998 when it issued its last report under section 4(d) of the FLSA. Section 4(d) previously required the Department to submit a report to Congress every two years regarding coverage under the FLSA.

A.2.1 Section 13(a)(1) Outside Sales Workers

Outside sales workers are a subset of the section 13(a)(1) exemptions, but since they are not affected by the salary regulations they are not discussed in detail in the preamble. Outside sales workers are included in occupational category ''door-to-door sales workers, news and street vendors, and related workers'' (Census code 4950). This category is composed of workers who both would and would not qualify for the outside sales worker exemption; for

[162] To match 1990 Census Codes to the corresponding 2000 Census Codes see: *http://www.census.gov/people/io/methodology/*. To translate the 2000 Census Codes into the 2002 Census Codes each code is multiplied by 10.

[163] Beginning January 2011, the MORG data use the 2010 Census Codes. The Department translates these codes into the equivalent 2002 Census Codes to create continuity. The crosswalk is available at: *http://www.census.gov/people/io/methodology/*.

[164] These probabilities are applied to the population of workers who are either (1) in occupational categories associated with named occupations or (2) white collar, earn $455 or more per week, and are salaried.

[165] The gamma distribution was chosen because during the 2004 revision it fit the data the best of the non-linear distributions considered, which included normal, lognormal, and gamma. 69 FR 22204–08.

[166] A gamma distribution is a general type of statistical distribution that is based on two parameters, in this case alpha and beta.

[167] Since the standard error is much smaller than the sample standard deviation, using the standard error to calculate the shape and location parameters resulted in probabilities that vary less with earnings.

example, street vendors would not qualify. Therefore, the percentage of these workers that qualify for the exemption was estimated. The Department believes that, under the 1990 Census Codes system, outside sales workers were more or less uniquely identified with occupational category ''street & door-to-door sales workers'' (277). Therefore, the Department exempts the share of workers in category 4950 who under the old classification system would have been classified as code 277 (43 percent).

A.2.2 Agricultural Workers

Similar to the 2004 analysis, the Department excluded agricultural workers from the universe of affected employees. Agricultural workers were identified by occupational-industry combination. However, in the 2004 Final Rule all workers in agricultural industries were excluded; here only workers also in select occupations were excluded since not all workers in agricultural industries qualify for the agricultural overtime pay exemptions. This method better approximates the true number of exempt agricultural workers and provides a more conservative estimate of the number of affected workers. Industry categories include: ''crop production'' (0170), ''animal production'' (0180), and ''support activities for agriculture and forestry'' (0290). Occupational categories include all blue collar occupations (identified with the probability codes), ''farm, ranch, and other agricultural managers'' (0200), ''general and operations managers'' (0020), and ''first-line supervisors/managers of farming, fishing, and forestry workers'' (6000).

A.2.3 Other Section 13(a) Exemptions

The following methodology relies mainly on CPS MORG data but also incorporates alternative data sources when necessary.

Section 13(a)(3): Seasonal amusement and recreational establishment

Any employee of an amusement or recreational establishment may be exempt from minimum wage and overtime pay if the establishment meets either of the following tests: (a) It operates for seven months or less during any calendar year, or (b) its revenue for the six lowest months of the year is less than one-third of the other six months of such year. Amusement and recreational establishments are defined as ''establishments frequented by the public for its amusement or recreation,'' and ''typical examples of such are the concessionaires at amusement parks and beaches.'' [168] In the CPS MORG data the Department identifies general amusement and recreation in the following industry categories:

- ''independent artists, performing arts, spectator sports, and related industries'' (8560),
- ''museums, art galleries, historical sites, and similar institutions'' (8570),
- ''bowling centers'' (8580),
- ''other amusement, gambling, and recreation industries'' (8590), and
- ''recreational vehicle parks and camps, and rooming and boarding houses'' (8670).[169]

The CPS MORG data does not provide information on employers' operating information or revenue. Using Business Employment Dynamics (BED) data, the Department estimated the share of leisure and hospitality employees working for establishments that are closed for at least one quarter a year.[170] Although not technically the same as the FLSA definition of ''seasonal,'' this is the best available approximation of ''seasonal'' employees. The Department estimated that 3 percent of amusement and recreational workers will be exempt.

The 1998 section 4(d) report estimated the number of exempt workers by applying an estimate determined in 1987 by a detailed report from the Employment Standards Administration. The Department chose not to use this estimate because it is outdated.

Section 13(a)(3) also exempts employees of seasonal religious or non-profit educational centers, but many of these workers have already been excluded from the analysis either as religious workers (not covered by the FLSA) or as teachers (professional exemption) and so are not estimated.

[168] 29 CFR 779.385.

[169] The Department does not believe that all employees in this industry category would qualify for this exemption. However, we had no way to segregate in the data employees who would and would not qualify for exemption.

[170] Seasonal employment was calculated by taking the difference in employment between establishment openings (all establishments that are either opening for the first time or reopening) and establishment births (establishments that are opening for the first time)—resulting in employment in only establishments reopening. Similarly, seasonal employment was estimated by taking the difference in employment between establishment closings and establishment deaths. These two estimates were then averaged. The analysis is limited to the leisure and hospitality industry. Since the exemption is limited to workers in ''establishments frequented by the public for its amusement or recreation'' the Department must assume the rate of employment in seasonal establishments, relative to all establishments, is equivalent across these amusement or recreation establishments and all leisure and hospitality establishments.

Section 13(a)(5): Fishermen

Any employee, such as a fisherman, employed in the catching, harvesting, or farming of fish or other aquatic life forms, is exempt from minimum wage and overtime pay. Fishermen are identified in occupational categories ''fishers and related fishing workers'' (6100) and ''ship and boat captains and operators'' (9310) and the industry category ''fishing, hunting, and trapping'' (0280). Workers identified in both these occupational and industry categories are considered exempt.

Section 13(a)(8): Small, local newspapers

This exemption from minimum wage and overtime pay applies to any employee employed by a newspaper with circulation of less than 4,000 and circulated mainly within the county where published. Newspaper employees are identified in the following occupational categories:

- ''news analysts, reporters and correspondents'' (2810),
- ''editors'' (2830),
- ''technical writers'' (2840),
- ''writers and authors'' (2850), and
- ''miscellaneous media and communication workers'' (2860).

The exemption is limited to the industry category ''newspaper publishers'' (6470). To limit the exemption to small, local papers, the Department limits the exemption to employees in rural areas. Although employment in a rural area is not synonymous with employment at a small newspaper, this is the best approach currently available. Alternatively, the Department could use data from Dun and Bradstreet (D&B) as was done in the 1998 section 4(d) report. This data would provide information on which establishments are in rural areas; from this the Department could estimate the share of employment in rural areas. This approach would be much more time intensive but would not necessarily provide a better result.

Section 13(a)(10): Switchboard operators

An independently owned public telephone company that has not more than 750 stations may claim the minimum wage and overtime pay exemption for its switchboard operators. ''Switchboard operators, including answering service'', are exempt under occupation code 5010 and industry classifications ''wired telecommunications carriers'' (6680) and ''other telecommunications carriers'' (6690). Using the 2007 Economic Census, the Department

estimated that 0.84 percent of employees in the relevant telecommunication sub-industries are employed by firms with fewer than ten employees (the estimated level of employment necessary to service seven hundred and fifty stations).

According to the 1998 section 4(d) report, fewer than 10,000 workers were exempt in 1987 and so the Department did not develop a methodology for estimating the number exempt.

Section 13(a)(12): Seamen on foreign vessels

Any employee employed as a seaman on a vessel other than an American vessel is exempt from minimum wage and overtime pay. Seamen are identified by occupational categories:

- ''sailors and marine oilers'' (9300),
- ''ship and boat captains and operators'' (9310), and
- ''ship engineers'' (9330).

The CPS MORG data does not identify whether the vessel is foreign or domestic. The best approach the Department has devised is to assume that the number of workers in the occupation ''deep sea foreign transportation of freight'' (SIC 441) in 2000 is roughly equivalent to the number of workers on foreign vessels. The 2000 Occupational Employment Statistics estimates there were 14,210 workers in this occupation and thus that number of seamen are assigned exempt status on a random basis.[171]

Section 13(a)(15): Companions

Domestic service workers employed to provide ''companionship services'' for an elderly person or a person with an illness, injury, or disability are not required to be paid the minimum wage or overtime pay. Companions are classified under occupational categories:

- ''nursing, psychiatric, and home health aides'' (3600) and
- ''personal and home care aides'' (4610).

And industry categories:

- ''home health care services'' (8170),
- ''individual and family services'' (8370), and
- ''private households'' (9290).

All the workers who fall within these occupational and industry categories were previously excluded from the analysis because they are paid on an hourly basis and/or are in an occupation where workers have no likelihood of qualifying for the section 13(a)(1) exemption.

Section 13(a)(16): Criminal investigators

The criminal investigator must be employed by the federal government and paid ''availability pay.'' [172] Criminal investigators are identified in occupational categories:

- ''detectives and criminal investigators'' (3820),
- ''fish and game wardens'' (3830), and
- ''private detectives and investigators'' (3910).

This exemption was not mentioned in the 1998 section 4(d) report. The Department exempts all workers in the occupations identified above and employed by the federal government.

Section 13(a)(17): Computer workers

Computer workers who meet the duties test are exempt under two sections of the FLSA. Salaried computer workers who earn a weekly salary of not less than $455 are exempt under section 13(a)(1) and computer workers who are paid hourly are exempt under section 13(a)(17) if they earn at least $27.63 an hour.

Occupations that may be considered exempt include: ''computer and information systems managers'' (110), ''computer scientists and systems analysts'' (1000), ''computer programmers'' (1010), ''computer software engineers'' (1020), ''computer support specialists'' (1040), ''database administrators'' (1060), ''network and computer systems administrators'' (1100), ''network systems and data communications analysts'' (1110), ''computer operators'' (5800), and ''computer control programmers and operators'' (7900).

To identify computer workers exempt under section 13(a)(17), we restrict the population to workers who are paid on an hourly basis and who earn at least $27.63 per hour. To determine which of these workers pass the computer duties test, we use the probabilities of exemption assigned to these occupations by the Department and assume a linear relationship between earnings and exemption status.

A.2.4 Section 13(b) Exemptions

Section 13(b)(1): Motor carrier employees

This exemption eliminated overtime pay for ''any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 31502 of Title 49[.]'' In essence, these are motor carrier workers,[173] identified by industry category ''truck transportation'' (6170).

To be exempt, these workers must engage in ''safety affecting activities''. Examples of exempt occupations include: ''driver, driver's helper, loader, or mechanic''.[174] The relevant occupational categories are:

- ''electronic equipment installers and repairers, motor vehicles'' (7110),
- ''automotive service technicians and mechanics'' (7200),
- ''bus and truck mechanics and diesel engine specialists'' (7210),
- ''heavy vehicle and mobile equipment service technicians and mechanics'' (7220), and
- ''driver/sales workers and truck drivers'' (9130).[175]

Section 13(b)(2): Rail carrier employees

Section 13(b)(2) exempts ''any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of Title 49.'' [176] This includes industrial category ''rail transportation'' (6080). The 1998 methodology did not include occupational requirements but the 2004 methodology did, so this restriction was included. Occupations are limited to:

- ''locomotive engineers and operators'' (9200),
- ''railroad brake, signal, and switch operators'' (9230),
- ''railroad conductors and yardmasters'' (9240), and
- ''subway, streetcar, and other rail transportation workers'' (9260).

Section 13(b)(3): Air carrier employees

This section exempts employees subject to the ''provisions of title II of the Railway Labor Act.'' [177] In essence, this exempts air carrier employees, identified by industry category ''air transportation'' (6070). The 1998 methodology did not include occupational requirements but the 2004 methodology did, so this restriction was included. Occupations are limited to ''aircraft pilots and flight engineers''

[171] Revisions to the SIC classification system since 2000 have eliminated this category; thus, more recent data are not available.

[172] Availability pay is compensation for hours when the agent must be available to perform work over and above the standard 40 hours per week. *See http://www.opm.gov/oca/pay/HTML/AP.HTM.*

[173] 49 U.S.C. 31502. The text of the law is available at: *http://www.gpo.gov/fdsys/pkg/USCODE–2011-title49/html/USCODE–2011-title49-subtitleVI-partB-chap315-sec31502.htm.*

[174] Fact Sheet #19: The Motor Carrier Exemption under the Fair Labor Standards Act (FLSA).

[175] The 2004 methodology used 1990 Census codes 505, 507, and 804 which crosswalk to these occupations. However, occupations 605, 613, and 914 (included in the 1990 Census code 804 crosswalk) were excluded because under the new classification system they were deemed irrelevant.

[176] 49 U.S.C. 10101–11908. Text of the law is available at: *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleIV-partA.pdf.*

[177] 45 U.S.C. 181 *et seq.* Available at: *http://www.gpo.gov/fdsys/pkg/USCODE–2013-title45/html/USCODE–2013-title45-chap8-subchapII.htm.*

(9030) and ''aircraft mechanics and service technicians'' (7140).

Section 13(b)(6): Seamen

Occupational categories include ''sailors and marine oilers'' (9300), ''ship and boat captains and operators'' (9310), and ''ship engineers'' (9330).[178] The exemption is limited to the ''water transportation'' industry (6090).

Section 13(b)(10): Salesmen, partsmen, or mechanics

The Department limited this exemption to workers employed in a ''nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.'' Industry classifications include: ''automobile dealers'' (4670) and ''other motor vehicle dealers'' (4680). In the 2004 Final Rule, the industry was limited to 1990 Census code 612 which became Census code ''automobile dealers'' (4670). Category 4680 (''other motor vehicle dealers'') is also included here in keeping with the 1998 section 4(d) report methodology.

The 1998 methodology did not include an occupational restriction; however, the 2004 methodology limited the exemption to automobiles, trucks, or farm implement sales workers and mechanics.

Automobiles, trucks, or farm implement sales workers include:

- ''parts salespersons'' (4750), and
- ''retail salespersons'' (4760).[179]

Mechanics include:

- ''electronic equipment installers and repairers, motor vehicles'' (7110),
- ''automotive body and related repairers'' (7150),
- ''automotive glass installers and repairers'' (7160),
- ''automotive service technicians and mechanics'' (7200),
- ''bus and truck mechanics and diesel engine specialists'' (7210),
- ''heavy vehicle and mobile equipment service technicians and mechanics'' (7220),
- ''small engine mechanics'' (7240), and
- ''miscellaneous vehicle and mobile equipment mechanics, installers, and repairers'' (7260).[180]

TABLE A2—PROBABILITY CODES BY OCCUPATION

2002 Census code	Occupation	Probability code
10	Chief executives	1
20	General and operations managers	1
40	Advertising and promotions managers	1
50	Marketing and sales managers	1
60	Public relations managers	2
100	Administrative services managers	1
110	Computer and information systems managers	1
120	Financial managers	1
130	Human resources managers	1
140	Industrial production managers	1
150	Purchasing managers	1
160	Transportation, storage, and distribution managers	1
200	Farm, ranch, and other agricultural managers	3
210	Farmers and ranchers	0
220	Construction managers	1
230	Education administrators	1
300	Engineering managers	1
310	Food service managers	3
320	Funeral directors	2
330	Gaming managers	2
340	Lodging managers	3
350	Medical and health services managers	1
360	Natural sciences managers	1
400	Postmasters and mail superintendents	0
410	Property, real estate, and community association managers	3
420	Social and community service managers	1
430	Managers, all other	1
500	Agents and business managers of artists, performers, and athletes	2
510	Purchasing agents and buyers, farm products	2
520	Wholesale and retail buyers, except farm products	2
530	Purchasing agents, except wholesale, retail, and farm products	2
540	Claims adjusters, appraisers, examiners, and investigators	2
560	Compliance officers, except agriculture, construction, health and safety, and transportation	3
600	Cost estimators	1
620	Human resources, training, and labor relations specialists	2
700	Logisticians	1
710	Management analysts	2
720	Meeting and convention planners	2
730	Other business operations specialists	2
800	Accountants and auditors	1
810	Appraisers and assessors of real estate	3
820	Budget analysts	2

[178] The 2004 methodology used 1990 Census codes 828, 829, and 833 which crosswalk to these occupations. However, occupation 952 (dredge, excavating, and loading machine operators) was excluded because under the new classification system they were deemed irrelevant.

[179] The 2004 methodology used codes 263 and 269 which crosswalk to these codes plus a few others which have been deemed irrelevant and excluded (4700, 4740, and 4850).

[180] The 2004 methodology used codes 505, 506, 507, and 514 which generally crosswalk to these codes. A few additional codes were added which were deemed relevant (7240 and 7260).

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
830	Credit analysts	2
840	Financial analysts	2
850	Personal financial advisors	2
860	Insurance underwriters	1
900	Financial examiners	3
910	Loan counselors and officers	2
930	Tax examiners, collectors, and revenue agents	1
940	Tax preparers	2
950	Financial specialists, all other	2
1000	Computer scientists and systems analysts	1
1010	Computer programmers	2
1020	Computer software engineers	1
1040	Computer support specialists	1
1060	Database administrators	1
1100	Network and computer systems administrators	1
1110	Network systems and data communications analysts	1
1200	Actuaries	1
1210	Mathematicians	1
1220	Operations research analysts	1
1230	Statisticians	1
1240	Miscellaneous mathematical science occupations	1
1300	Architects, except naval	1
1310	Surveyors, cartographers, and photogrammetrists	3
1320	Aerospace engineers	1
1330	Agricultural engineers	1
1340	Biomedical engineers	1
1350	Chemical engineers	1
1360	Civil engineers	1
1400	Computer hardware engineers	1
1410	Electrical and electronic engineers	1
1420	Environmental engineers	1
1430	Industrial engineers, including health and safety	1
1440	Marine engineers and naval architects	1
1450	Materials engineers	1
1460	Mechanical engineers	1
1500	Mining and geological engineers, including mining safety engineers	1
1510	Nuclear engineers	1
1520	Petroleum engineers	1
1530	Engineers, all other	1
1540	Drafters	4
1550	Engineering technicians, except drafters	4
1560	Surveying and mapping technicians	4
1600	Agricultural and food scientists	1
1610	Biological scientists	1
1640	Conservation scientists and foresters	1
1650	Medical scientists	1
1700	Astronomers and physicists	1
1710	Atmospheric and space scientists	1
1720	Chemists and materials scientists	1
1740	Environmental scientists and geoscientists	1
1760	Physical scientists, all other	3
1800	Economists	2
1810	Market and survey researchers	2
1820	Psychologists	1
1830	Sociologists	2
1840	Urban and regional planners	3
1860	Miscellaneous social scientists and related workers	2
1900	Agricultural and food science technicians	4
1910	Biological technicians	4
1920	Chemical technicians	4
1930	Geological and petroleum technicians	4
1940	Nuclear technicians	4
1960	Other life, physical, and social science technicians	4
2000	Counselors	2
2010	Social workers	3
2020	Miscellaneous community and social service specialists	3
2040	Clergy	0
2050	Directors, religious activities and education	0
2060	Religious workers, all other	0
2100	Lawyers	1

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
2110	Judges, magistrates, and other judicial workers	1
2140	Paralegals and legal assistants	4
2150	Miscellaneous legal support workers	3
2200	Postsecondary teachers	1
2300	Preschool and kindergarten teachers	2
2310	Elementary and middle school teachers	1
2320	Secondary school teachers	1
2330	Special education teachers	1
2340	Other teachers and instructors	1
2400	Archivists, curators, and museum technicians	1
2430	Librarians	1
2440	Library Technicians	4
2540	Teacher assistants	4
2550	Other education, training, and library workers	1
2600	Artists and related workers	2
2630	Designers	1
2700	Actors	1
2710	Producers and directors	1
2720	Athletes, coaches, umpires, and related workers	2
2740	Dancers and choreographers	1
2750	Musicians, singers, and related workers	1
2760	Entertainers and performers, sports and related workers, all other	1
2800	Announcers	2
2810	News analysts, reporters and correspondents	3
2820	Public relations specialists	3
2830	Editors	3
2840	Technical writers	3
2850	Writers and authors	2
2860	Miscellaneous media and communication workers	2
2900	Broadcast and sound engineering technicians and radio operators	4
2910	Photographers	1
2920	Television, video, and motion picture camera operators and editors	2
2960	Media and communication equipment workers, all other	4
3000	Chiropractors	1
3010	Dentists	1
3030	Dietitians and nutritionists	3
3040	Optometrists	1
3050	Pharmacists	1
3060	Physicians and surgeons	1
3110	Physician assistants	2
3120	Podiatrists	1
3130	Registered nurses	1
3140	Audiologists	2
3150	Occupational therapists	3
3160	Physical therapists	2
3200	Radiation therapists	3
3210	Recreational therapists	2
3220	Respiratory therapists	3
3230	Speech-language pathologists	2
3240	Therapists, all other	2
3250	Veterinarians	1
3260	Health diagnosing and treating practitioners, all other	1
3300	Clinical laboratory technologists and technicians	3
3310	Dental hygienists	3
3320	Diagnostic related technologists and technicians	3
3400	Emergency medical technicians and paramedics	3
3410	Health diagnosing and treating practitioner support technicians	4
3500	Licensed practical and licensed vocational nurses	4
3510	Medical records and health information technicians	4
3520	Opticians, dispensing	0
3530	Miscellaneous health technologists and technicians	2
3540	Other healthcare practitioners and technical occupations	3
3600	Nursing, psychiatric, and home health aides	0
3610	Occupational therapist assistants and aides	0
3620	Physical therapist assistants and aides	0
3630	Massage therapists	0
3640	Dental assistants	0
3650	Medical assistants and other healthcare support occupations	4
3700	First-line supervisors/managers of correctional officers	2
3710	First-line supervisors/managers of police and detectives	3

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
3720	First-line supervisors/managers of fire fighting and prevention workers	3
3730	Supervisors, protective service workers, all other	3
3740	Fire fighters	0
3750	Fire inspectors	0
3800	Bailiffs, correctional officers, and jailers	0
3820	Detectives and criminal investigators	0
3830	Fish and game wardens	0
3840	Parking enforcement workers	0
3850	Police and sheriff's patrol officers	0
3860	Transit and railroad police	0
3900	Animal control workers	0
3910	Private detectives and investigators	4
3920	Security guards and gaming surveillance officers	0
3940	Crossing guards	0
3950	Lifeguards and other protective service workers	0
4000	Chefs and head cooks	0
4010	First-line supervisors/managers of food preparation and serving workers	3
4020	Cooks	0
4030	Food preparation workers	0
4040	Bartenders	0
4050	Combined food preparation and serving workers, including fast food	0
4060	Counter attendants, cafeteria, food concession, and coffee shop	0
4110	Waiters and waitresses	0
4120	Food servers, nonrestaurant	0
4130	Dining room and cafeteria attendants and bartender helpers	0
4140	Dishwashers	0
4150	Hosts and hostesses, restaurant, lounge, and coffee shop	4
4160	Food preparation and serving related workers, all other	0
4200	First-line supervisors/managers of housekeeping and janitorial workers	4
4210	First-line supervisors/managers of landscaping, lawn service, and groundskeeping workers	3
4220	Janitors and building cleaners	0
4230	Maids and housekeeping cleaners	0
4240	Pest control workers	0
4250	Grounds maintenance workers	0
4300	First-line supervisors/managers of gaming workers	1
4320	First-line supervisors/managers of personal service workers	4
4340	Animal trainers	4
4350	Nonfarm animal caretakers	0
4400	Gaming services workers	0
4410	Motion picture projectionists	0
4420	Ushers, lobby attendants, and ticket takers	0
4430	Miscellaneous entertainment attendants and related workers	0
4460	Funeral service workers	0
4500	Barbers	0
4510	Hairdressers, hairstylists, and cosmetologists	0
4520	Miscellaneous personal appearance workers	0
4530	Baggage porters, bellhops, and concierges	0
4540	Tour and travel guides	0
4550	Transportation attendants	0
4600	Child care workers	0
4610	Personal and home care aides	0
4620	Recreation and fitness workers	2
4640	Residential advisors	0
4650	Personal care and service workers, all other	0
4700	First-line supervisors/managers of retail sales workers	2
4710	First-line supervisors/managers of non-retail sales workers	2
4720	Cashiers	4
4740	Counter and rental clerks	4
4750	Parts salespersons	4
4760	Retail salespersons	4
4800	Advertising sales agents	2
4810	Insurance sales agents	2
4820	Securities, commodities, and financial services sales agents	2
4830	Travel agents	4
4840	Sales representatives, services, all other	3
4850	Sales representatives, wholesale and manufacturing	3
4900	Models, demonstrators, and product promoters	4
4920	Real estate brokers and sales agents	3
4930	Sales engineers	3
4940	Telemarketers	4

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
4950	Door-to-door sales workers, news and street vendors, and related workers	4
4960	Sales and related workers, all other	3
5000	First-line supervisors/managers of office and administrative support workers	1
5010	Switchboard operators, including answering service	4
5020	Telephone operators	4
5030	Communications equipment operators, all other	4
5100	Bill and account collectors	4
5110	Billing and posting clerks and machine operators	4
5120	Bookkeeping, accounting, and auditing clerks	4
5130	Gaming cage workers	4
5140	Payroll and timekeeping clerks	4
5150	Procurement clerks	4
5160	Tellers	4
5200	Brokerage clerks	4
5210	Correspondence clerks	4
5220	Court, municipal, and license clerks	4
5230	Credit authorizers, checkers, and clerks	3
5240	Customer service representatives	3
5250	Eligibility interviewers, government programs	3
5260	File Clerks	4
5300	Hotel, motel, and resort desk clerks	4
5310	Interviewers, except eligibility and loan	4
5320	Library assistants, clerical	4
5330	Loan interviewers and clerks	3
5340	New accounts clerks	4
5350	Order clerks	4
5360	Human resources assistants, except payroll and timekeeping	4
5400	Receptionists and information clerks	4
5410	Reservation and transportation ticket agents and travel clerks	4
5420	Information and record clerks, all other	4
5500	Cargo and freight agents	4
5510	Couriers and messengers	4
5520	Dispatchers	4
5530	Meter readers, utilities	4
5540	Postal service clerks	4
5550	Postal service mail carriers	4
5560	Postal service mail sorters, processors, and processing machine operators	4
5600	Production, planning, and expediting clerks	4
5610	Shipping, receiving, and traffic clerks	4
5620	Stock clerks and order fillers	0
5630	Weighers, measurers, checkers, and samplers, recordkeeping	4
5700	Secretaries and administrative assistants	4
5800	Computer operators	4
5810	Data entry keyers	4
5820	Word processors and typists	4
5830	Desktop publishers	4
5840	Insurance claims and policy processing clerks	3
5850	Mail clerks and mail machine operators, except postal service	4
5860	Office clerks, general	4
5900	Office machine operators, except computer	4
5910	Proofreaders and copy markers	4
5920	Statistical assistants	4
5930	Office and administrative support workers, all other	4
6000	First-line supervisors/managers of farming, fishing, and forestry workers	4
6010	Agricultural inspectors	3
6020	Animal breeders	3
6040	Graders and sorters, agricultural products	0
6050	Miscellaneous agricultural workers	0
6100	Fishers and related fishing workers	0
6110	Hunters and trappers	0
6120	Forest and conservation workers	0
6130	Logging workers	0
6200	First-line supervisors/managers of construction trades and extraction workers	4
6210	Boilermakers	0
6220	Brickmasons, blockmasons, and stonemasons	0
6230	Carpenters	0
6240	Carpet, floor, and tile installers and finishers	0
6250	Cement masons, concrete finishers, and terrazzo workers	0
6260	Construction laborers	0
6300	Paving, surfacing, and tamping equipment operators	0

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
6310	Pile-driver operators	0
6320	Operating engineers and other construction equipment operators	0
6330	Drywall installers, ceiling tile installers, and tapers	0
6350	Electricians	0
6360	Glaziers	0
6400	Insulation workers	0
6420	Painters, construction and maintenance	0
6430	Paperhangers	0
6440	Pipelayers, plumbers, pipefitters, and steamfitters	0
6460	Plasterers and stucco masons	0
6500	Reinforcing iron and rebar workers	0
6510	Roofers	0
6520	Sheet metal workers	0
6530	Structural iron and steel workers	0
6600	Helpers, construction trades	0
6660	Construction and building inspectors	3
6700	Elevator installers and repairers	0
6710	Fence erectors	0
6720	Hazardous materials removal workers	0
6730	Highway maintenance workers	0
6740	Rail-track laying and maintenance equipment operators	0
6750	Septic tank servicers and sewer pipe cleaners	0
6760	Miscellaneous construction and related workers	0
6800	Derrick, rotary drill, and service unit operators, oil, gas, and mining	0
6820	Earth drillers, except oil and gas	0
6830	Explosives workers, ordnance handling experts, and blasters	0
6840	Mining machine operators	0
6910	Roof bolters, mining	0
6920	Roustabouts, oil and gas	0
6930	Helpers—extraction workers	0
6940	Other extraction workers	0
7000	First-line supervisors/managers of mechanics, installers, and repairers	3
7010	Computer, automated teller, and office machine repairers	0
7020	Radio and telecommunications equipment installers and repairers	0
7030	Avionics technicians	0
7040	Electric motor, power tool, and related repairers	0
7050	Electrical and electronics installers and repairers, transportation equipment	0
7100	Electrical and electronics repairers, industrial and utility	0
7110	Electronic equipment installers and repairers, motor vehicles	0
7120	Electronic home entertainment equipment installers and repairers	0
7130	Security and fire alarm systems installers	0
7140	Aircraft mechanics and service technicians	0
7150	Automotive body and related repairers	0
7160	Automotive glass installers and repairers	0
7200	Automotive service technicians and mechanics	0
7210	Bus and truck mechanics and diesel engine specialists	0
7220	Heavy vehicle and mobile equipment service technicians and mechanics	0
7240	Small engine mechanics	0
7260	Miscellaneous vehicle and mobile equipment mechanics, installers, and repairers	0
7300	Control and valve installers and repairers	0
7310	Heating, air conditioning, and refrigeration mechanics and installers	0
7320	Home appliance repairers	0
7330	Industrial and refractory machinery mechanics	0
7340	Maintenance and repair workers, general	0
7350	Maintenance workers, machinery	0
7360	Millwrights	0
7410	Electrical power-line installers and repairers	0
7420	Telecommunications line installers and repairers	0
7430	Precision instrument and equipment repairers	0
7510	Coin, vending, and amusement machine servicers and repairers	0
7520	Commercial divers	4
7540	Locksmiths and safe repairers	0
7550	Manufactured building and mobile home installers	0
7560	Riggers	0
7600	Signal and track switch repairers	0
7610	Helpers—installation, maintenance, and repair workers	0
7620	Other installation, maintenance, and repair workers	0
7700	First-line supervisors/managers of production and operating workers	3
7710	Aircraft structure, surfaces, rigging, and systems assemblers	0
7720	Electrical, electronics, and electromechanical assemblers	0

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
7730	Engine and other machine assemblers	0
7740	Structural metal fabricators and fitters	0
7750	Miscellaneous assemblers and fabricators	0
7800	Bakers	0
7810	Butchers and other meat, poultry, and fish processing workers	0
7830	Food and tobacco roasting, baking, and drying machine operators and tenders	0
7840	Food batchmakers	0
7850	Food cooking machine operators and tenders	0
7900	Computer control programmers and operators	4
7920	Extruding and drawing machine setters, operators, and tenders, metal and plastic	0
7930	Forging machine setters, operators, and tenders, metal and plastic	0
7940	Rolling machine setters, operators, and tenders, metal and plastic	0
7950	Cutting, punching, and press machine setters, operators, and tenders, metal and plastic	0
7960	Drilling and boring machine tool setters, operators, and tenders, metal and plastic	0
8000	Grinding, lapping, polishing, and buffing machine tool setters, operators, and tenders, metal and plastic	0
8010	Lathe and turning machine tool setters, operators, and tenders, metal and plastic	0
8020	Milling and planing machine setters, operators, and tenders, metal and plastic	0
8030	Machinists	0
8040	Metal furnace and kiln operators and tenders	0
8060	Model makers and patternmakers, metal and plastic	0
8100	Molders and molding machine setters, operators, and tenders, metal and plastic	0
8120	Multiple machine tool setters, operators, and tenders, metal and plastic	0
8130	Tool and die makers	0
8140	Welding, soldering, and brazing workers	0
8150	Heat treating equipment setters, operators, and tenders, metal and plastic	0
8160	Lay-out workers, metal and plastic	0
8200	Plating and coating machine setters, operators, and tenders, metal and plastic	0
8210	Tool grinders, filers, and sharpeners	0
8220	Metalworkers and plastic workers, all other	0
8230	Bookbinders and bindery workers	0
8240	Job printers	0
8250	Prepress technicians and workers	0
8260	Printing machine operators	0
8300	Laundry and dry-cleaning workers	0
8310	Pressers, textile, garment, and related materials	0
8320	Sewing machine operators	0
8330	Shoe and leather workers and repairers	0
8340	Shoe machine operators and tenders	0
8350	Tailors, dressmakers, and sewers	0
8360	Textile bleaching and dyeing machine operators and tenders	0
8400	Textile cutting machine setters, operators, and tenders	0
8410	Textile knitting and weaving machine setters, operators, and tenders	0
8420	Textile winding, twisting, and drawing out machine setters, operators, and tenders	0
8430	Extruding and forming machine setters, operators, and tenders, synthetic and glass fibers	0
8440	Fabric and apparel patternmakers	0
8450	Upholsterers	0
8460	Textile, apparel, and furnishings workers, all other	0
8500	Cabinetmakers and bench carpenters	0
8510	Furniture finishers	0
8520	Model makers and patternmakers, wood	0
8530	Sawing machine setters, operators, and tenders, wood	0
8540	Woodworking machine setters, operators, and tenders, except sawing	0
8550	Woodworkers, all other	0
8600	Power plant operators, distributors, and dispatchers	0
8610	Stationary engineers and boiler operators	0
8620	Water and liquid waste treatment plant and system operators	0
8630	Miscellaneous plant and system operators	0
8640	Chemical processing machine setters, operators, and tenders	0
8650	Crushing, grinding, polishing, mixing, and blending workers	0
8710	Cutting workers	0
8720	Extruding, forming, pressing, and compacting machine setters, operators, and tenders	0
8730	Furnace, kiln, oven, drier, and kettle operators and tenders	0
8740	Inspectors, testers, sorters, samplers, and weighers	0
8750	Jewelers and precious stone and metal workers	0
8760	Medical, dental, and ophthalmic laboratory technicians	0
8800	Packaging and filling machine operators and tenders	0
8810	Painting workers	0
8830	Photographic process workers and processing machine operators	0
8840	Semiconductor processors	0
8850	Cementing and gluing machine operators and tenders	0

TABLE A2—PROBABILITY CODES BY OCCUPATION—Continued

2002 Census code	Occupation	Probability code
8860	Cleaning, washing, and metal pickling equipment operators and tenders	0
8900	Cooling and freezing equipment operators and tenders	0
8910	Etchers and engravers	0
8920	Molders, shapers, and casters, except metal and plastic	0
8930	Paper goods machine setters, operators, and tenders	0
8940	Tire builders	0
8950	Helpers—production workers	0
8960	Production workers, all other	0
9000	Supervisors, transportation and material moving workers	3
9030	Aircraft pilots and flight engineers	4
9040	Air traffic controllers and airfield operations specialists	3
9110	Ambulance drivers and attendants, except emergency medical technicians	0
9120	Bus drivers	0
9130	Driver/sales workers and truck drivers	0
9140	Taxi drivers and chauffeurs	0
9150	Motor vehicle operators, all other	0
9200	Locomotive engineers and operators	0
9230	Railroad brake, signal, and switch operators	0
9240	Railroad conductors and yardmasters	0
9260	Subway, streetcar, and other rail transportation workers	0
9300	Sailors and marine oilers	0
9310	Ship and boat captains and operators	0
9330	Ship engineers	4
9340	Bridge and lock tenders	0
9350	Parking lot attendants	0
9360	Service station attendants	0
9410	Transportation inspectors	0
9420	Other transportation workers	0
9500	Conveyor operators and tenders	0
9510	Crane and tower operators	0
9520	Dredge, excavating, and loading machine operators	0
9560	Hoist and winch operators	0
9600	Industrial truck and tractor operators	0
9610	Cleaners of vehicles and equipment	0
9620	Laborers and freight, stock, and material movers, hand	0
9630	Machine feeders and offbearers	0
9640	Packers and packagers, hand	0
9650	Pumping station operators	0
9720	Refuse and recyclable material collectors	0
9730	Shuttle car operators	0
9740	Tank car, truck, and ship loaders	0
9750	Material moving workers, all other	0

Appendix B. Additional Tables

TABLE B1—EAP EXEMPT WORKERS POTENTIALLY AFFECTED BY THIS PROPOSED RULEMAKING, BY INDUSTRY, 2013

Industry	Potentially affected EAP workers (millions)	As percent of potentially affected EAP workers (percent)
Total [a]	*21.4*	*100.0*
Agriculture	0.0	0.1
Forestry, logging, fishing, hunting, and trapping	0.0	0.0
Mining	0.2	0.8
Construction	0.8	3.6
Nonmetallic mineral product manufacturing	0.1	0.3
Primary metals and fabricated metal products	0.2	1.0
Machinery manufacturing	0.3	1.4
Computer and electronic product manufacturing	0.6	2.9
Electrical equipment, appliance manufacturing	0.1	0.5
Transportation equipment manufacturing	0.6	2.6
Wood products	0.0	0.2
Furniture and fixtures manufacturing	0.1	0.2
Miscellaneous and not specified manufacturing	0.3	1.5
Food manufacturing	0.2	0.8
Beverage and tobacco products	0.1	0.3

TABLE B1—EAP EXEMPT WORKERS POTENTIALLY AFFECTED BY THIS PROPOSED RULEMAKING, BY INDUSTRY, 2013—Continued

Industry	Potentially affected EAP workers (millions)	As percent of potentially affected EAP workers (percent)
Textile, apparel, and leather manufacturing	0.1	0.3
Paper and printing	0.1	0.6
Petroleum and coal products manufacturing	0.1	0.3
Chemical manufacturing	0.4	2.0
Plastics and rubber products	0.1	0.3
Wholesale trade	0.8	3.9
Retail trade	1.6	7.5
Transportation and warehousing	0.5	2.4
Utilities	0.3	1.3
Publishing industries (except internet)	0.2	0.9
Motion picture and sound recording industries	0.0	0.2
Broadcasting (except internet)	0.2	0.8
Internet publishing and broadcasting	0.0	0.2
Telecommunications	0.4	1.6
Internet service providers and data processing services	0.0	0.2
Other information services	0.1	0.3
Finance	1.9	9.0
Insurance	1.0	4.7
Real estate	0.3	1.4
Rental and leasing services	0.1	0.3
Professional and technical services	3.6	16.8
Management of companies and enterprises	0.1	0.3
Administrative and support services	0.5	2.3
Waste management and remediation services	0.0	0.2
Educational services	0.8	3.9
Hospitals	1.0	4.7
Health care services, except hospitals	1.2	5.5
Social assistance	0.4	1.8
Arts, entertainment, and recreation	0.4	1.7
Accommodation	0.1	0.5
Food services and drinking places	0.3	1.2
Repair and maintenance	0.1	0.5
Personal and laundry services	0.1	0.3
Membership associations and organizations	0.4	1.8
Private households	0.0	0.0
Public administration	0.8	3.9

Note: Pooled data for 2011–2013.
[a] Columns may not sum to total due to rounding.

VIII. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires agencies to prepare regulatory flexibility analyses and make them available for public comment, when proposing regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such, in lieu of preparing an analysis. *See* 5 U.S.C. 605.

The Department specifically invites comment on the impacts of the proposed rule on small businesses, including whether alternatives exist that will reduce burden on small entities while still meeting the objectives of the FLSA. The Chief Counsel for Advocacy of the Small Business Administration (SBA) was notified of a draft of this rule upon submission of the rule to OMB under E.O. 12866.

A. Reasons Why Action by the Agency Is Being Considered

The EAP exemption salary level test that is the focus of this proposed rulemaking has been updated seven times since the FLSA was originally enacted in 1938. These updates were necessary in order for the required salary level to keep pace with increases in earnings in the economy so that it could continue to serve as an effective bright-line test that separates workers who Congress intended to remain entitled to minimum wage and overtime protection and those who may qualify as bona fide EAP exempt workers.

The standard salary level and HCE total compensation levels have not been updated since 2004 and, as described in detail in section VII.A.ii., the standard salary level has declined considerably in real terms relative to both its 2004 and 1975 values. As a result, the exemption removes workers from overtime protection who were not intended to be within the exemption. Similarly, the HCE annual compensation requirement is out of date; more than twice as many workers earn at least $100,000 annually compared to when it was adopted in 2004. Therefore, the Department believes that rulemaking is necessary in order to restore the effectiveness of these levels.

B. Statement of Objectives and Legal Basis for the Proposed Rule

Section 13(a)(1) creates a minimum wage and overtime pay exemption for

bona fide executive, administrative, professional, outside sales employees, and teachers and academic administrative personnel, as those terms are defined and delimited by the Secretary of Labor. The regulations in part 541 contain specific criteria that define each category of exemption. The regulations also define those computer employees who are exempt under section 13(a)(1) and section 13(a)(17). To qualify for exemption, employees must meet certain tests regarding their job duties and generally must be paid on a salary basis at not less than $455 per week.

The Department's primary objective in this rulemaking is to ensure that the revised salary levels will continue to provide a useful and effective test for exemption. The salary levels were designed to operate as a ready guide to assist employers in deciding which employees were more likely to meet the duties tests for the exemptions. If left unchanged, however, the effectiveness of the salary level test as a means of determining exempt status diminishes as nonexempt employee wages increase over time.

The Department last updated the salary levels in the 2004 Final Rule, setting the standard test threshold at $455 per week for EAP employees. The 2004 Final Rule also created a new ''highly compensated'' test for exemption. Under the HCE exemption, employees who are paid total annual compensation of at least $100,000 (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA's overtime requirements if they customarily and regularly perform at least one of the duties or responsibilities of an exempt EAP employee identified in the standard tests for exemption. § 541.601.

Employees who meet the requirements of part 541 are excluded from the Act's minimum wage and overtime pay protections. As a result, employees may work any number of hours in the workweek and not be subject to the FLSA's overtime pay requirements. Some State laws have stricter exemption standards than those described above. The FLSA does not preempt any such stricter State standards. If a State law establishes a higher standard than the provisions of the FLSA, the higher standard applies in that specific state. *See* 29 U.S.C. 218.

In order to restore the ability of the standard salary level and the HCE compensation requirement to serve as appropriate bright-line tests between overtime-protected employees and employees who may be EAP exempt, the Department proposes to increase the minimum salary level test from $455 to the 40th percentile of the weekly wages of all full-time salaried employees ($921 per week), and the level for the HCE test from $100,000 to the annual equivalent of the 90th percentile of weekly earnings for full-time salaried employees ($122,148 in annual earnings). The Department reached the proposed salary levels after considering available data on actual salary levels currently being paid in the economy. In order to ensure that these levels continue to function appropriately in the future, the Department also proposes to automatically update them annually either by maintaining the respective earnings percentile or updating the levels based on changes in the CPI–U.

C. Description of the Number of Small Entities To Which the Proposed Rule Will Apply

i. Definition of Small Entity

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by SBA to classify entities as small for the purpose of this analysis. SBA establishes separate standards for individual 6-digit NAICS industry codes, and standard cutoffs are typically based on either the average annual number of employees, or the average annual receipts. For example, the SBA has two widely used size standards: 500 employees for manufacturing, and $7 million in annual receipts for nonmanufacturing services. However, some exceptions do exist, the most notable being that depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets. Small governmental jurisdictions are another noteworthy exception; they are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with population of less than 50,000 people.[181]

ii. Data Sources and Methods

The Department obtained data from several different sources to determine employment in small entities for each industry. Categorical tabulations from the Statistics of U.S. Businesses (SUSB, 2007 and 2011) were used for most industries. Industries that used data from alternative sources include Credit Unions (National Credit Union Association, 2010), Commercial and Non-Commercial Banks (Federal Depository Insurance Corporation, 2013), and Public Administration, where employees were classified based on employment estimates from the Census of Governments (2012), and local population estimates from the Census of Population and Housing (2012). The Department used the latest available data in each case, so data years differ between sources.[182]

For each industry, the total number of employees is organized in categories based on different characteristics of the employing entity. The categories are defined using employment, annual revenue, and assets. The Department combined these categories with the corresponding SBA standards to estimate the proportion of workers in each industry who are employed by a small entity.

The general methodological approach was to classify all employees in categories below the SBA cutoff as in ''small entity'' employment. If a cutoff fell in the middle of a defined category, a uniform distribution of employees across that bracket was assumed in order to determine what proportion should be classified as in small entity employment. The Department assumed that the small entity distribution across revenue categories for Other Depository Institutions, which was not separately represented in FDIC asset data, was similar to that of Credit Unions.

iii. Number of Small Entities Impacted by Proposed Rule

It is difficult to estimate precisely the number of small entities that will be impacted by the proposed rule. The employee, payroll, and receipts data in SUSB are tabulated by ''enterprise size,'' where the definition of ''enterprise'' is equivalent to ''entity'' for the purposes of the current discussion. However, this data does not directly report the number of enterprises, but instead provides data on ''establishments'' (individual plants, regardless of ownership), and ''firms'' (a collection of all plants with a single owner within a given state and industry). Therefore, an enterprise may consist of multiple firms, depending on the number of states and industries it operates in. Using the SUSB number of small firms as a proxy may thus overestimate the number of small entities nationally. However, this effect is unlikely to be large, because most small entities would probably operate on smaller scales (*i.e.,* will either consist

[181] *See http://www.sba.gov/advocacy/regulatory-flexibility-act* for details.

[182] Latest available year of data for each source in parentheses. SUSB employment data are for 2011 (although since the time of writing 2012 data have become available) and receipts data are for 2007.

of a single establishment, or operate within a single state and industry).

The estimated probability that an EAP exempt worker is employed by a small entity is set equal to the calculated proportion of workers employed in the corresponding industry. For example, if an industry has 50 percent of workers employed in small entities, then on average one out of every two EAP exempt workers in this industry is expected to be small-entity employed. The Department applied these probabilities to the population of EAP exempt workers in order to find the number of workers (total and affected by the rule) employed by small entities, their payroll under the current and the proposed salary levels, and the number of small entities employing affected workers. The Department also tabulated the total number of affected entities and employees by industry group.

With these limitations, the Department estimates that the proposed rule will affect 4.7 million workers in an estimated 290,800 establishments (Table 33).[183] Among affected workers, 1.8 million were estimated to be employed by small entities, working in 211,000 small establishments (Table 34). While nearly 40 percent of affected EAP workers are employed in small entities, this composes a very small percentage of overall small entity employment in the economy; affected workers account for 3.5 percent of small establishment employment on average, with at most 7.0 percent of workers affected in any industry. The industries with the most affected small entity employees are:

- Education and health services with 336,800 affected workers (3.5 percent of employees) in 26,800 establishments;
- Professional and business services with 319,200 affected workers (5.0 percent of employees) in 56,100 establishments; and
- Wholesale and retail trade with 241,700 affected workers (3.7 percent of employees) in 38,000 establishments.

The financial activities industry has the largest percent of affected small entity employees; 7 percent are affected.

TABLE 33—AFFECTED ENTITIES UNDER PROPOSED STANDARD SALARY AND HCE COMPENSATION LEVEL INCREASES

Industry	Establishments (1,000s)		Workers (1,000s) [a]		Annual payroll (billions)
	Total	Affected [b]	Total	Affected	
Total	7,427	290.8	132,084	4,682.4	$5,881
Agriculture, forestry, fishing, & hunting	21	0.1	1,150	7.1	35
Mining	28	0.6	931	20.4	61
Construction	658	15.1	6,804	155.7	314
Manufacturing	296	8.1	14,844	406.1	759
Wholesale & retail trade	1,475	52.1	18,733	662.1	657
Transportation & utilities	229	5.2	6,911	156.7	334
Information	134	8.3	2,969	183.0	164
Financial activities	809	61.4	9,009	683.3	499
Professional & business services	1,281	69.2	13,573	733.0	734
Education & health services	910	28.1	32,120	992.4	1,427
Leisure & hospitality	772	16.3	12,166	256.7	303
Other services	722	23.2	5,699	183.2	193
Public administration [c]	90	3.0	7,175	242.7	399

Note: Establishment data from the Survey of U.S. Businesses 2011; worker data from CPS MORG using pooled data for 2011–2013.

[a] Excludes the self-employed and unpaid workers. Affected workers are those who would become overtime eligible under the proposed increased salary levels if weekly earnings did not change.

[b] The number of affected establishments depends on assumptions made by the Department. The numbers presented here assume the share of establishments that are affected is equal to the share of workers who are affected within an industry.

[c] Establishment number represents the total number of governments, including state and local. Data from Government Organization Summary Report: 2012.

TABLE 34—AFFECTED SMALL ENTITIES AND WORKERS UNDER PROPOSED STANDARD SALARY AND HCE COMPENSATION LEVEL INCREASES

Industry	Small entity establishments (1,000s)		Small entity workers (1,000s) [a]		Annual small entity payroll (billions)
	Total	Affected [b]	Total	Affected [c]	
Total [d]	6,045	210.6	50,355	1,754.0	$2,110
Agriculture, forestry, fishing, & hunting	20	0.1	624	3.9	18
Mining	23	0.6	351	9.8	23
Construction	640	14.3	4,373	97.8	201
Manufacturing	265	7.2	6,372	172.6	309
Wholesale & retail trade	1,038	38.0	6,600	241.7	251
Transportation & utilities	178	4.1	1,711	39.7	76
Information	73	4.6	768	48.6	40
Financial activities	550	38.7	2,812	198.2	147
Professional & business services	1,121	56.1	6,374	319.2	339
Education & health services	763	26.8	9,573	336.8	382
Leisure & hospitality	632	13.0	6,380	131.6	155
Other services	668	23.4	3,724	130.2	134
Public administration [e]	73	2.5	692	23.9	34

Note: Establishment data from the Survey of U.S. Businesses 2011; worker data from CPS MORG using pooled data for 2011–2013.

[183] To estimate the number of establishments the ratio of affected workers to total workers was applied to the total number of establishments. For example, 4.7 million of the total 132 million workers are affected, or 3.5 percent; 3.5 percent of the total 7.4 million establishments is 290,000 establishments with affected workers.

[a] Excludes the self-employed and unpaid workers. Affected workers are those who would become overtime eligible under the proposed increased salary levels if weekly earnings did not change.
[b] The number of affected establishments depends on assumptions made by the Department. The numbers presented here assume the share of workers in small entities who are affected is also the share of small entity establishments that are affected.
[c] These numbers are also equal to the number of small entity establishments under the assumption that each affected establishment has one affected worker.
[d] The components do not necessarily equal the totals due to when averages are taken.
[e] Establishment number represents the total number of governments, including state and local.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The FLSA sets minimum wage, overtime pay, and recordkeeping requirements for employment subject to its provisions. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Every covered employer must keep certain records for each nonexempt worker. The regulations at part 516 require employers to maintain records for employees subject to the minimum wage and overtime pay provisions of the FLSA. Thus, the recordkeeping requirements are not new requirements; however, employers would need to keep some additional records for additional affected employees if the NPRM were to be made final without change. As indicated in this analysis, the NPRM would expand minimum wage and overtime pay coverage to 4.6 million affected EAP workers (including HCE workers and excluding Type 4 workers who remain exempt). This would result in an increase in employer burden and was estimated in the PRA portion (section VI.) of this NPRM. Note that the burdens reported for the PRA section of this NPRM include the entire information collection and not merely the additional burden estimated as a result of this NPRM.

i. Costs to Small Entities

As detailed in section VII.D.iv., three direct costs to employers are quantified in this analysis: (1) Regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. Regulatory familiarization costs are the costs incurred to read and become familiar with the requirements of the rule. Adjustment costs are the costs accrued to determine workers' new exemption statuses, notify employees of policy changes, and update payroll systems. Managerial costs associated with this proposed rulemaking occur because hours of workers who are newly entitled to overtime may be more closely scheduled and monitored to minimize or avoid paying the overtime premium. Regardless of business size, the Department estimates that each establishment will spend one hour of time for regulatory familiarization; one hour per each affected worker in adjustment costs; and five minutes per week scheduling and monitoring each affected worker expected to be reclassified as overtime eligible as a result of this proposed rule.

For small entities, the Department projected annual regulatory familiarization, adjustment, and managerial costs, and payments to employees in terms of extra wages paid. The Department believes that the minimum and maximum per-establishment costs are the most accurate possible estimates for the range of impact of the proposed rule on individual employers.

As a direct result of this proposed rule, the Department expects total direct employer costs (regulatory familiarization, adjustment, and managerial costs) of $134.5 to 186.6 million will be incurred by small entities in the first year after the promulgation of the proposed rule (Table 35). The three industries with the most affected small entity employees (educational and health services, professional and business services, and wholesale and retail trade) account for more than 50 percent of direct costs.

Average weekly earnings for affected EAP workers in small entities are expected to increase by $6.16 per week per affected worker due to both the standard salary level and HCE total annual compensation level proposed increases. This results in costs to employer of $561.5 million in wage increases to employees, which compose 0.1 to 0.8 percent of aggregate affected entity payroll (Table 36).

The Department evaluated the impacts to small entities employing affected workers using a range to represent minimum and maximum costs incurred by an average establishment. To define the average establishment, the Department divided the total number of employees and payroll among small establishments by the total number of small establishments on an industry-specific basis. The minimum level of impacts is defined by assuming only one worker employed by the average establishment is affected by the revised salary level. The maximum level is defined by assuming 100 percent of workers employed by the average establishment are affected by the revised salary level.[184] On average, depending on the number of affected workers it employs, an affected establishment is expected to incur $100 to $600 in direct costs and $320 to $2,700 in additional payroll to employees in the first year after the promulgation of the proposed rule. On average, these combined first year costs and transfers account for approximately 0.11 to 0.95 percent of average establishment payroll (depending on how affected small establishments are defined).

[184] Larger than average small establishments in each industry might employ a larger number of affected employees, and such establishments might incur larger costs and transfers than the ''average'' establishment used as a benchmark in this analysis. However, although such establishments' costs and transfers will increase in proportion to the number of affected workers, these establishments' payroll will also increase in approximate proportion to the number of workers they employ. Since such establishments can never have more than 100 percent of their employees affected by the proposed rule, the rule's impact as measured by costs and transfers as a percentage of establishment payroll will be roughly the same magnitude as an average establishment with 100 percent of employees affected. Thus, the scalability of the average establishment impacts adequately captures impacts to establishments both larger and smaller than average.

TABLE 35—COSTS TO SMALL ENTITIES UNDER PROPOSED STANDARD SALARY AND HCE COMPENSATION LEVEL INCREASES

Industry	Cost to small entities in year 1 [a]					
	Total (millions)		Per affected establishment (1,000s)		Percent of annual payroll	
	Min [b]	Max [b]	Min [b]	Max [b]	Min [b]	Max [b]
Total	$186.6	$134.5	$0.1	$0.6	$0.03	$0.18%
Agriculture, forestry, fishing, and hunting	0.4	0.3	0.1	2.2	0.01	0.25
Mining	1.0	0.7	0.1	1.2	0.01	0.12
Construction	10.4	7.6	0.1	0.5	0.03	0.17
Manufacturing	18.4	12.7	0.1	1.8	0.01	0.15
Wholesale and retail trade	25.7	18.8	0.1	0.5	0.04	0.20
Transportation and utilities	4.2	3.0	0.1	0.7	0.03	0.17
Information	5.2	3.7	0.1	0.8	0.02	0.14
Financial activities	21.1	15.6	0.1	0.4	0.04	0.15
Professional and business services	34.0	25.0	0.1	0.4	0.04	0.15
Educational and health services	35.8	25.2	0.1	0.9	0.02	0.19
Leisure and hospitality	14.0	10.0	0.1	0.8	0.04	0.31
Other services	13.9	10.2	0.1	0.4	0.05	0.22
Public administration	2.5	1.8	0.1	0.7	0.02	0.15

Note: Pooled data for 2011–2013.
[a] Direct costs include regulatory familiarization, adjustment, and managerial costs.
[b] The range of costs per establishment depends on the number of affected establishments. The minimum assumes that each affected establishment has one affected worker (therefore, the number of affected establishments is equal to the number of affected workers). The maximum assumes the share of workers in small entities who are affected is also the share of small entity establishments that are affected.

TABLE 36—TRANSFERS FOR SMALL ENTITIES UNDER PROPOSED STANDARD SALARY AND HCE COMPENSATION LEVEL INCREASES

Industry	Transfers for small entities in year 1 [a]				
	Total (millions)	Per affected establishment (1,000s)		Percent of annual payroll	
		Min [b]	Max [b]	Min [b]	Max [b]
Total	$561.5	$0.32	$2.7	$0.09	$0.76%
Agriculture, forestry, fishing, and hunting	0.5	0.12	3.8	0.01	0.42
Mining	3.1	0.31	4.9	0.03	0.49
Construction	54.4	0.56	3.8	0.18	1.21
Manufacturing	53.5	0.31	7.4	0.03	0.64
Wholesale and retail trade	101.4	0.42	2.7	0.17	1.10
Transportation and utilities	10.2	0.26	2.5	0.06	0.58
Information	19.9	0.41	4.3	0.07	0.78
Financial activities	53.1	0.27	1.4	0.10	0.51
Professional and business services	84.2	0.26	1.5	0.09	0.50
Educational and health services	75.1	0.22	2.8	0.04	0.56
Leisure and hospitality	70.0	0.53	5.4	0.22	2.19
Other services	31.4	0.24	1.3	0.12	0.67
Public administration	4.7	0.20	1.9	0.04	0.39

Note: Pooled data for 2011–2013.
[a] Aggregate change in total annual payroll experienced by small entities under the proposed salary levels after labor market adjustments. This amount represents the total amount of (wage) transfers from employers to employees.
[b] The range of transfers per establishment depends on the number of affected establishments (the denominator). The minimum assumes that each affected establishment has one affected worker (therefore, the number of affected establishments is equal to the number of affected workers). The maximum assumes the share of workers in small entities who are affected is also the share of small entity establishments that are affected.

ii. Differing Compliance and Reporting Requirements for Small Entities

This NPRM provides no differing compliance requirements and reporting requirements for small entities. The Department has strived to minimize respondent recordkeeping burden by requiring no specific form or order of records under the FLSA and its corresponding regulations. Moreover, employers would normally maintain the records under usual or customary business practices.

iii. Least Burdensome Option or Explanation Required

The Department believes it has chosen the most effective option that updates and clarifies the rule and which results in the least burden. Among the options considered by the Department, the least restrictive option was taking no regulatory action and the most restrictive was updating the 1975 short test salary level for inflation based upon the CPI–U (which would result in a standard salary level of $1,083 per week). Taking no regulatory action does not address the Department's concerns discussed above under Need for Regulation. The Department found the most restrictive option to be overly burdensome on business in general and

specifically small business, and high in light of the fact that there no longer is a long duties test with an associated lower salary level that employers may use to establish that employees are exempt.

Pursuant to section 603(c) of the RFA, the following alternatives are to be addressed:

i. Differing compliance or reporting requirements that take into account the resources available to small entities. The FLSA creates a level playing field for businesses by setting a floor below which employers may not pay their employees. To establish differing compliance or reporting requirements for small businesses would undermine this important purpose of the FLSA and appears to not be necessary given the small annualized cost of the rule. The Year 1 cost of the proposed rule for the average employer that qualifies as small was estimated to range from a minimum of $400 to a maximum of $3,300. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance. Therefore the Department has not proposed differing compliance or reporting requirements for small businesses.

ii. The clarification, consolidation, or simplification of compliance and reporting requirements for small entities. The proposed rule imposes no new reporting requirements. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

iii. The use of performance rather than design standards. Under the proposed rule, employers may achieve compliance through a variety of means. Employers may elect to continue to claim the EAP exemption for affected employees by adjusting salary levels, hiring additional workers or spreading overtime hours to other employees, or compensating employees for overtime hours worked. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

iv. An exemption from coverage of the rule, or any part thereof, for such small entities. Creating an exemption from coverage of this rule for businesses with as many as 500 employees, those defined as small businesses under SBA's size standards, is inconsistent with Congressional intent in the enactment of the FLSA, which applies to all employers that satisfy the enterprise coverage threshold or employ individually covered employees. *See* 29 U.S.C. 203(s). Moreover, creating a regulatory exemption for small businesses would be beyond the scope of the Department's statutory authority to define and delimit the meaning of the term ''employed in a bona fide executive, administrative, or professional capacity.'' 29 U.S.C. 213(a)(1).

E. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Department is not aware of any federal rules that duplicate, overlap, or conflict with this NPRM.

IX. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501, requires agencies to prepare a written statement for rules for which a general notice of proposed rulemaking was published and that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $156 million ($100 million in 1995 dollars adjusted for inflation) or more in any one year. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This proposed rule is issued pursuant to section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(a)(1). The section exempts from the FLSA's minimum wage and overtime pay requirements ''any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of [the Administrative Procedure Act]. . .).'' 29 U.S.C. 213(a)(1). The requirements of the exemption provided by this section of the Act are contained in part 541 of the Department's regulations. Section 3(e) of the FLSA, 29 U.S.C. 203(e), defines ''employee'' to include most individuals employed by a state, political subdivision of a state, or interstate governmental agency. Section 3(x) of the FLSA, 29 U.S.C. 203(x), also defines public agencies to include the government of a state or political subdivision thereof, or any interstate governmental agency.

B. Assessment of Costs and Benefits

For purposes of the UMRA, this rule includes a Federal mandate that is expected to result in increased expenditures by the private sector of more than $156 million in at least one year, but the rule will not result in increased expenditures by state, local and tribal governments, in the aggregate, of $156 million or more in any one year.

Costs to state and local governments: Based on the RIA, the Department determined that the proposed rule will result in Year 1 costs for state and local governments totaling $111.5 million; of which $28.3 million are direct employer costs and $83.2 million are transfers (Table 37). Additionally, the proposed rule will lead to $0.3 million in DWL. In subsequent years, the Department estimated that state and local governments may experience payroll increases of as much as $79.1 million in any one year when the salary level is automatically updated (with automatic updating using the fixed percentile method).

Costs to the private sector: The Department determined that the proposed rule will result in Year 1 costs to the private sector of approximately $2.0 billion, of which $563.8 million are direct employer costs and $1,396.2 million are transfers. Additionally, the proposed rule will result in $7.0 million in DWL. In subsequent years, the Department estimated that the private sector may experience a payroll increase of as much as $1,219.1 million per year (with automatic updating using the fixed percentile method).

TABLE 37—SUMMARY OF YEAR 1 AFFECTED EAP WORKERS, REGULATORY COSTS, AND TRANSFERS BY TYPE OF EMPLOYER

	Total	Private	Government [a]
Affected EAP Workers (1,000s)			
Number	4,682	4,163	507
Direct Employer Costs (Millions)			
Regulatory familiarization	$254.5	$251.4	$3.1
Adjustment	160.1	142.3	17.3
Managerial	178.1	170.0	7.9
Total direct costs	592.7	563.8	28.3
Transfers (Millions)			
From employers to workers	$1,482.5	$1,396.2	$83.2
Direct Employer Costs & Transfers (Millions)			
From employers	$2,075.2	$1,960.0	$111.5
DWL (Millions)			
DWL [b]	$7.4	$7.0	$0.3

[a] Includes only state, local, and tribal governments.
[b] DWL was estimated based on the aggregate impact of both the minimum wage and overtime pay provisions.

The largest benefit to workers is the transfer of income from employers; but, to the extent that the benefits to workers outweigh the costs to employers, there may be a societal welfare increase due to this transfer. The channels through which societal welfare may increase, and other secondary benefits may occur, include: Decreased litigation costs due to fewer workers subject to the duties test, the multiplier effect of the transfer, increased productivity, reduced dependence on social assistance, and a potential increase in time off and its associated benefits to the social welfare of workers. Additionally, because of the increased salary level, overtime protection will be strengthened for 6.3 million salaried white collar workers and 3.7 million salaried blue collar workers who do not meet the duties requirements for the EAP exemption, but who earn between the current minimum salary level of $455 per week and the proposed salary level because their right to minimum wage and overtime protection will be clear rather than depend upon an analysis of their duties.

UMRA requires agencies to estimate the effect of a regulation on the national economy if, at its discretion, such estimates are reasonably feasible and the effect is relevant and material. 5 U.S.C. 1532(a)(4). However, OMB guidance on this requirement notes that such macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of GDP, or in the range of $41.9 billion to $83.8 billion (using 2013 GDP). A regulation with smaller aggregate effect is not likely to have a measurable impact in macro-economic terms unless it is highly focused on a particular geographic region or economic sector, which is not the case with this proposed rule.

The Department's RIA estimates that the total first-year costs (direct employer costs, transfers from employers to workers, and deadweight loss) of the proposed rule will be approximately $2.0 billion for private employers and $111.8 million for state and local governments. Given OMB's guidance, the Department has determined that a full macro-economic analysis is not likely to show any measurable impact on the economy. Therefore, these costs are compared to payroll costs and revenue to demonstrate the feasibility of adapting to these new rules.

Total first-year private sector costs compose less than 0.04 percent of private sector payrolls nationwide (2013 payroll costs were estimated to be $5.4 trillion).[185] Total private sector first-year costs compose less than 0.006 percent of national private sector revenues (2013 revenues were estimated to be $32.9 trillion).[186] The Department concludes that impacts of this magnitude are affordable and will not result in significant disruptions to typical firms in any of the major industry categories.

Total first-year state and local government costs compose approximately 0.01 percent of state and local government payrolls (2013 payroll costs were estimated to be $864 billion).[187] First-year state and local government costs compose 0.003 percent of state and local government revenues (2013 revenues were estimated to be $3.5 trillion).[188] Impacts of this magnitude will not result in significant disruptions to typical state and local governments. The $111.5 million in state and local government costs constitutes an average of approximately $1,240 for each of the approximately 90,100 state and local entities. The Department considers impacts of this magnitude to be quite small both in absolute terms and in relation to payrolls and revenue.

[185] Private sector payroll costs in 2007 were $4.8 trillion using the 2007 Economic Census of the United States. This was inflated to 2013 dollars using the CPI–U. Table EC0700A1: All sectors: Geographic Area Series: Economy-Wide Key Statistics: 2007.

[186] Private sector revenues in 2007 were $29.3 trillion using the 2007 Economic Census of the United States. This was inflated to 2013 dollars using the CPI–U. Table EC0700A1: All sectors: Geographic Area Series: Economy-Wide Key Statistics: 2007.

[187] State and local payroll costs in 2012 were reported in the Census of Governments data as $852 billion. This was inflated to 2013 dollars using the CPI–U. 2012 Census of Governments: Employment Summary Report. Available at: *http://www2.census.gov/govs/apes/2012_summary_report.pdf*.

[188] State and local revenues in 2011 were reported by the Census as $3.4 trillion. This was inflated to 2013 dollars using the CPI–U. State and Local Government Finances Summary: 2011. Available at: *http://www2.census.gov/govs/local/summary_report.pdf*.

C. Summary of State, Local, and Tribal Government Input

As part of the Department's outreach program prior to the issuance of this NPRM, the Department conducted stakeholder listening sessions with representatives of state and local governments and tribal governments. In these sessions the Department asked stakeholders to address, among other issues, three questions: (1) What is the appropriate salary level for exemption; (2) what, if any, changes should be made to the duties tests; and (3) how can the regulations be simplified. The input received from state, local, and tribal government representatives was similar to that provided by representatives of private businesses and is summarized in section III. of this preamble. The discussions in the listening sessions have informed the development of this NPRM. The Department specifically seeks comments from state, local, and tribal governments concerning the ability of these entities to absorb the costs related to the proposed revisions.

D. Least Burdensome Option or Explanation Required

The Department's consideration of various options has been described throughout the preamble. The Department believes that it has chosen the least burdensome but still cost-effective mechanism to update the salary level and index future levels that is also consistent with the Department's statutory obligation. Although some alternative options considered would have set the standard salary level at a rate lower than the proposed salary level, which might impose lower direct payroll costs on employers, that outcome may not necessarily be the most cost-effective or least burdensome alternative for employers. A lower salary level—or a degraded stagnant level over time—could result in a less effective bright-line test for separating exempt workers from those nonexempt workers intended to be within the Act's protection. A low salary level will also increase the role of the duties test in determining whether an employee is exempt, which would increase the likelihood of misclassification and, in turn, increase the risk that employees who should receive overtime and minimum wage protections under the FLSA are denied those protections.

Selecting a standard salary level inevitably impacts both the risk and cost of misclassification of overtime-eligible employees earning above the salary level as well as the risk and cost of providing overtime protection to employees performing bona fide EAP duties who are paid below the salary level. An unduly low level risks increasing employer liability from unintentionally misclassifying workers as exempt; but an unduly high standard salary level increases labor costs to employers precluded from claiming the exemption for employees performing bona fide EAP duties. Thus the ultimate cost of the regulation is increased if the standard salary level is set either too low or too high. The Department has determined that setting the standard salary level at the 40th percentile of earnings for full-time salaried workers and automatically updating this level annually either by maintaining that earnings percentile or using the CPI–U best balances the risks and costs of misclassification of exempt status.

X. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Executive Order 13175, Indian Tribal Governments

This proposed rule would not 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.

XII. Effects on Families

The undersigned hereby certifies that the proposed rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

XIII. Executive Order 13045, Protection of Children

This proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

XIV. Environmental Impact Assessment

A review of this proposed rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XV. Executive Order 13211, Energy Supply

This proposed rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XVI. Executive Order 12630, Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

XVII. Executive Order 12988, Civil Justice Reform Analysis

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Signed at Washington, DC this 18th day of June, 2015.

David Weil,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor proposes to amend title 29 of the Code of Federal Regulations, part 541 as follows:

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

■ 1. The authority citation for part 541 is revised to read as follows:

Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945–53 Comp., p. 1004); Secretary's Order 01–2014 (Dec. 10, 2014), 79 FR 77527 (Dec. 24, 2014).

■ 2. Revise paragraph (a)(1) of § 541.100 to read as follows:

§ 541.100 General rule for executive employees.

(a) * * *

(1) Compensated on a salary basis as of [EFFECTIVE DATE OF FINAL RULE] at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. As of [DATE TBD] on each subsequent year, compensated on a salary basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities;

* * * * *

■ 3. Revise paragraph (a)(1) of § 541.200 to read as follows:

§ 541.200 General rule for administrative employees.

(a) * * *

(1) Compensated on a salary or fee basis as of [EFFECTIVE DATE OF FINAL RULE] at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. As of [DATE TBD] on each subsequent year, compensated on a salary or fee basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities;

* * * * *

■ 4. Revise paragraph (a)(1) of § 541.204 to read as follows:

§ 541.204 Educational establishments.

(a) * * *

(1) Compensated on a salary or fee basis as of [EFFECTIVE DATE OF FINAL RULE] at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed. As of [DATE TBD] on each subsequent year, compensated on a salary or fee basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

* * * * *

■ 5. Revise paragraph (a)(1) of § 541.300 to read as follows:

§ 541.300 General rule for professional employees.

(a) * * *

(1) Compensated on a salary or fee basis as of [EFFECTIVE DATE OF FINAL RULE] at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. As of [DATE TBD] on each subsequent year, compensated on a salary or fee basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities; and

* * * * *

■ 6. Remove the first sentence of § 541.400(b) introductory text and add three sentences in its place to read as follows:

§ 541.400 General rule for computer employees.

* * * * *

(b) The section 13(a)(1) exemption applies to any computer employee who, as of [EFFECTIVE DATE OF FINAL RULE] is compensated on a salary or fee basis at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. As of [DATE TBD] on each subsequent year, the section 13(a)(1) exemption applies to any computer employee who is compensated on a salary or fee basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities. The section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate of not less than $27.63 an hour. * * *

* * * * *

■ 7. Amend § 541.600 by:

■ a. Removing the first sentence of paragraph (a) and adding two sentences in its place; and

■ b. Removing the first sentence of paragraph (b) and adding two sentences in its place.

The additions read as follows:

§ 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis as of [EFFECTIVE DATE OF FINAL RULE] at a rate per week of not less than $921 (or $774 per week, if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities. As of [DATE TBD] on each subsequent year, such employee must be compensated on a salary basis at a rate per week of not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier (with the rate for American Samoa to be calculated at 84 percent of the updated salary rate, provided that when the highest industry minimum wage for American Samoa equals the minimum wage under 29 U.S.C. 206(a)(1), exempt employees employed in all industries in American Samoa shall be paid the full salary rate), exclusive of board, lodging or other facilities. * * *

(b) The required amount of compensation per week may be translated into equivalent amounts for periods longer than one week. The

requirement will be met if the employee is compensated biweekly on a salary basis of $[DOUBLE THE 40th PERCENTILE AMOUNT], semimonthly on a salary basis of $[THE 40th PERCENTILE AMOUNT, MULTIPLIED BY 52 AND DIVIDED BY 24], or monthly on a salary basis of $[THE 40th PERCENTILE AMOUNT MULTIPLIED BY 52 AND DIVIDED BY 12]. * * *

* * * * *

■ 8. Amend § 541.601 by:

■ a. Revising paragraph (a);

■ b. Removing the first sentence of paragraph (b)(1) and adding two sentences in its place; and

■ c. Revising paragraph (b)(2).

The revisions read as follows:

§ 541.601 Highly compensated employees.

(a) An employee with total annual compensation of at least $122,148 as of [EFFECTIVE DATE OF FINAL RULE] is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C, or D of this part. As of [DATE TBD] on each subsequent year, an employee with total annual compensation of at least the updated compensation rate published annually by the Secretary in the **Federal Register** at least 60 days earlier is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C, or D of this part.

(b)(1) ''Total annual compensation'' must include at least a weekly amount that is, as of [EFFECTIVE DATE OF FINAL RULE] $921 paid on a salary or fee basis. As of [DATE TBD] of each year, ''total annual compensation'' must include a weekly amount that is not less than the updated salary rate published annually by the Secretary in the **Federal Register** at least 60 days earlier , paid on a salary or fee basis. * * *

(2) If an employee's total annual compensation does not total at least the minimum amount established in paragraph (a) of this section by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, if the current annual salary level for a highly compensated employee is $122,148, an employee may earn $100,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $25,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $12,148 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C, or D of this part.

* * * * *

■ 9. Revise § 541.604 to read as follows:

§ 541.604 Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, if the current weekly salary level is $921, an exempt employee guaranteed at least $921 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $921 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $921 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (*e.g.,* flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, if the weekly salary level is $921, an exempt employee guaranteed compensation of at least $1,000 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $300 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

■ 10. Revise paragraph (b) of § 541.605 to read as follows:

§ 541.605 Fee basis.

* * * * *

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least the minimum required salary per week if the employee worked 40 hours. Thus, if the salary level were $921, an artist paid $500 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $1000 if 40 hours were worked.

■ 11. Revise § 541.709 to read as follows:

§ 541.709 Motion picture producing industry.

The requirement that the employee be paid ''on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated, as of [EFFECTIVE DATE OF FINAL RULE], at a base rate of at least $1,404 per week (exclusive of board, lodging, or other facilities); and as of [DATE TBD] on each subsequent year, is compensated at a base rate of at least $[MOST RECENTLY EFFECTIVE MOTION PICTURE INDUSTRY BASE RATE INCREASED AT THE SAME RATIO AS THE STANDARD SALARY LEVEL IS INCREASED] (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C, or D of this part, and who is employed at a base rate of at least the applicable current minimum amount a week is

exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least the minimum weekly amount if 6 days were worked; or

(b) The employee is in a job category having the minimum weekly base rate and the daily base rate is at least one-sixth of such weekly base rate.

[FR Doc. 2015–15464 Filed 7–2–15; 8:45 am]

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