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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AE21

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Electronic Benefit Transfer-Related Provisions

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

ACTION: Final rule.

SUMMARY: This final rule considers public comments submitted in response to the proposed rule published February 28, 2013 and implements the provisions set forth in the Healthy, Hunger-Free Kids Act of 2010 related to electronic benefit transfer (EBT) for the WIC Program (also referred to herein as ''the Program''). The HHFKA amended provisions of the Child Nutrition Act of 1966 (CNA) and was enacted on December 13, 2010. EBT provisions of the HHFKA and other EBT implementation requirements included in this final rule are: A definition of EBT; a mandate that all WIC State agencies implement EBT delivery method by October 1, 2020; system management and reporting requirements; revisions to current provisions that prohibit imposition of costs on vendors; a requirement for the Secretary of Agriculture to establish minimum lane equipage standards; a requirement for the Secretary of Agriculture to establish technical standards and operating rules; and a requirement that State agencies use the National Universal Product Code (NUPC) database.

DATES:

Effective Date: This rule is effective on May 2, 2016.

Implementation Dates:

- The provisions found at 7 CFR 246.12(h)(3)(xxvii) and 7 CFR 246.12(z)(2) requiring minimum lane coverage deployment of Point of Sale (POS) terminals used to support the WIC Program shall be implemented by March 1, 2017.
- The provisions found at 7 CFR 246.12(h)(3)(xxx) and 7 CFR 246.12(aa)(4)(i) prohibiting a State agency from paying ongoing maintenance, processing fees or operational costs for multi-function vendor systems and equipment after statewide implementation shall be implemented either by March 1, 2018 or the date included in a Department-approved plan for continued support for these efforts.
- The provisions found at 7 CFR 246.12(h)(3)(xxxi) and 7 CFR 246.12(bb)(1) requiring each State agency, contractor and authorized vendor to comply with the published operating rules, standards and technical requirements and other industry standards identified by the Secretary shall be implemented either by March 1, 2018 or the date included in a Department-approved plan to incorporate the rules, standards and requirements in their system development plan.

FOR FURTHER INFORMATION CONTACT: Jerilyn Malliet, Chief, WIC EBT Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302; phone (703) 305–2746, OR email *Jerilyn.Malliet@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

This final rule addresses public comments submitted in response to the proposed rule published in the **Federal Register** on February 28, 2013 (78 FR 13549) which incorporated the provisions set forth in the HHFKA (Pub. L. 111–296), related to EBT for the WIC Program. The Department had previously issued policy and guidance in WIC Policy Memorandum #2011–3, issued March 22, 2011, to State agencies on implementation of the nondiscretionary provisions of the HHFKA that were effective on October 1, 2010. However, select areas of the law were discretionary, and therefore public comment was sought in the proposed rule. This final rule makes adjustments to improve clarity of the provisions set forth in the proposed rule and implements EBT requirements for the Program.

II. Background

Providing WIC participants with a specific prescription of supplemental nutritious foods based on their nutritional needs is a cornerstone of WIC's mission. Currently, the majority of WIC participants receive paper food instruments (FIs) containing their food prescription. However, in line with current trends and overall public expectation of doing business and receiving services electronically, the WIC Program has been gradually transitioning the benefit issuance methodology over the past several years from paper FIs to EBT. The use of EBT in the WIC Program allows both the WIC Program and its participants to use advanced technologies in the delivery of benefits and helps support WIC's goal to improve client services. It is well recognized and accepted that EBT is by far the preferred method of benefit delivery for the WIC Program and it is endorsed by WIC participants, authorized vendors and State WIC administrators. The Department has continued to support and promote WIC EBT through collaborative efforts with WIC State agencies, vendor groups, the banking industry, EBT processors and a variety of other EBT stakeholders. As State agencies move forward with WIC EBT, it is critical that standard business practices, policies and requirements are followed to collaboratively expedite EBT implementation and maximize resource utilization.

Given the challenges of the food benefit and technology needed to support those complexities and the nationwide WIC EBT implementation deadline of October 1, 2020 required by the HHFKA, the provisions in this final rule are critical for WIC State agencies, vendors, system developers and EBT processors to effectively implement the mandate. Establishment of these provisions will promote consistency, save resources and streamline EBT implementation, which will ultimately reduce barriers as WIC moves to EBT to deliver food benefits. This final rule supports and facilitates this transition and addresses many important aspects of WIC EBT implementation.

III. Summary of Comments Received on the Proposed Rule Related to EBT in the WIC Program

The proposed rule amending WIC regulations to incorporate WIC EBT provisions as set forth in the HHFKA provided a 90-day public comment period on the discretionary provisions of the proposed rule. The comment period was later extended by 30 days and ended on June 29, 2013.

A total of 45 comment letters were received on the proposed rule; of those, 12 comments were form letters. The comment letters were submitted from a variety of sources, including 18 WIC State agencies and Indian Tribal Organizations (ITOs), one from the National WIC Association, two from food retailer associations, seven from the electronic funds transfer industry including the Electronic Funds Transfer Association, 13 from hunger advocacy groups and four from members of the public.

In general, commenters expressed broad support for the proposed EBT provisions. Commenters also voiced concerns about various aspects of the proposed rule and made recommendations for clarifying or improving specific provisions. The Department considered all comments; importance was given to the substance of the comment, rather than the number of times a comment was submitted.

IV. Discussion of the Final Rule Provisions

1. Definitions: Section 246.2

The following definitions have been added or modified in the final rule:

Electronic Benefit Transfer. The proposed rule would have added the definition of EBT as a food delivery system that provides benefits using a card or other access device approved by the Secretary permitting electronic access to WIC Program benefits. Five comments were received on the definition of EBT; three were in full support of the definition as proposed. One commenter suggested the WIC Program use the plural ''benefits,'' citing that the Supplemental Nutrition Assistance Program (SNAP) uses the plural form and the two programs should be consistent. After verifying SNAP EBT regulations use the singular ''benefit'' in its definition of EBT at 7 CFR 274.12(b)(1), the definition retains the singular ''benefit'' as proposed which results in consistency between the two programs in using ''benefit'' rather than ''benefits''.

The remaining comment on the definition of EBT stated that EBT is a form of payment for WIC food benefits, not a food delivery system. The Department agrees with this comment and has modified the definition accordingly in the final rule. This final rule adds the definition of electronic benefit transfer at § 246.2 as follows: *Electronic Benefit Transfer (EBT)* means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

Cash-Value Voucher/Cash-Value Benefit. Two comments were received in support of expanding the definition of cash value voucher to acknowledge that in an EBT environment a cash value voucher is also a cash value benefit. Therefore, this final rule retains the definition of ''cash-value voucher/cash-value benefit'' at § 246.2 as proposed.

Participant Violation. As proposed, the definition of participant violation would be expanded to include the sale of cash-value vouchers, food instruments and EBT cards, or supplemental foods by participants and further expanded to specifically address the offer to sell WIC benefits in person, in print or online. As technology has advanced, opportunities to sell benefits have expanded to avenues such as the Internet. Protecting the integrity of the Program has always been a primary objective of the Department and WIC State agencies. The Department received 18 comments on the proposed change to the definition of participant violation. Three commenters were in full support of the change. Three commenters were in support of the change, but noted it is difficult for WIC State agencies to prove WIC-approved food items offered for sale by WIC participants are WIC benefits; therefore, the commenters recommended the Department establish, through regulation, the burden of proof required to impose a sanction on a participant suspected of selling WIC benefits. One of these commenters recommended removing the burden of proof from the WIC State agency altogether by making it a participant violation for a participant, caregiver or proxy to sell or offer to sell any item within the food package (or the food packages of any infants or children in his/her care). Since State agency administrative rules and procedures vary widely, the Department has opted not to establish the burden of proof in the regulatory definition of participant violation. It is incumbent upon WIC State agencies to work with their legal counsel and appropriate law enforcement agencies to determine the best course of action in situations where WIC participants are found to be selling or offering to sell food items they may have received as WIC benefits.

Twelve comments noted the word ''intent,'' as used in the expanded definition of participant violation in the proposed rule, was too broad and could result in the sanctioning of a WIC participant who merely spoke of or thought about selling WIC benefits, but took no further action. The Department concurs and the word ''intent'' has been replaced with ''deliberate'' as this more accurately conveys what is meant in the revised definition.

Eleven comments suggested the Department provide guidance on the types of policies WIC State agencies could develop in the future to address emerging issues. The WIC regulations already provide a framework for the types of policies State agencies may create for a variety of situations. The Department will continue to provide technical support to State agencies as issues emerge.

One commenter opposed the change and stated that WIC participants should not be sanctioned unless it is proven they sold WIC benefits. Given the importance of giving State agencies maximum flexibility to manage participant violations and to improve program integrity, the final rule slightly modifies the proposed definition of ''participant violation'' by substituting the word ''deliberate'' for ''intent,'' but otherwise retains the definition as proposed. Further, to ensure participants are aware that selling or offering to sell cash value vouchers, food instruments, EBT cards or supplemental foods is a participant violation, the final rule adds, at § 246.7(j)(10), a requirement for State agencies to include such a statement in the notification of rights and responsibilities provided to applicants and participants or their parents or caretakers.

Three commenters suggested adding a definition for ''EBT Ready'' or ''EBT Capable'' to clarify what equipment is required to support WIC as an authorized vendor and what the State agency would need to authorize the vendor. The Department recognizes these terms may cause confusion and thus a new definition of ''EBT Capable'' is added to § 246.2. The regulations no longer refer to ''EBT Ready,'' which has the same meaning as EBT Capable.

EBT Capable shall mean the WIC vendor demonstrates that their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases. In accordance with the EBT Operating Rules, a State agency

may accept a cash register system or payment device as EBT Capable if it has been certified by another State agency. Certification criteria will be discussed later in this rulemaking.

Also, based on these comments, the Department added a new definition for Statewide EBT. *Statewide EBT* means the State agency has converted all WIC clinics to EBT and all authorized vendors are capable of transacting WIC EBT purchases. This definition allows State agencies to identify a unique and easily verifiable date when new WIC vendors must prove that they are EBT Capable. The new definition for Statewide EBT has been added to § 246.2.

Several industry and State agency commenters indicated that the cost and deployment of equipment provisions in § 246.12(z) and § 246.12(aa) were confusing. The Department agrees with these comments and has added two definitions—one definition for *single-function equipment* and one definition for *multi-function equipment.* The use of common definitions for these terms is designed to clarify the discussion in the preamble below and the regulation itself.

Multi-function equipment means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers that is capable of supporting WIC EBT and other payment tender types.

Single-function equipment means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for WIC EBT. Single-function equipment is provided by the State agency or its contractor.

2. Statewide Implementation of EBT by October 1, 2020 and Exemptions: Sections 246.12(a) and 246.12(w)(2)

Section 17(h)(12)(B) of the CNA (42 U.S.C. 1771 *et seq.*) requires that each State agency implement EBT throughout the State by October 1, 2020, unless the Secretary grants an exemption. The proposed rule reflected these requirements by amending § 246.12(a) to add the statewide implementation requirement of EBT by October 1, 2020 and by providing information and requirements on allowable exemption criteria at § 246.12(w)(2). In total, 26 comments were received on these provisions, of which 19 were in full support of the provisions as proposed.

Generally, commenters expressed support for the EBT mandate that each State agency achieve statewide EBT by October 1, 2020. However, four commenters expressed concern that insufficient funding would delay or prohibit EBT implementation nationwide. The Department fully recognizes dedicated and sustained funding is critical to help State agencies implement EBT. The Department will continue to assist State agencies with their EBT implementation efforts, including exploring strategies to help make WIC EBT more affordable. As the mandate is legislatively required, however, the implementation date will remain as proposed at § 246.12(a).

Section 17(h)(12)(C) of the CNA authorizes the Secretary to grant exemptions to the statewide EBT requirement if the State agency can demonstrate one or more of the following: (1) There are unusual technical barriers; (2) operational costs of EBT are unaffordable within the nutrition services and administration (NSA) grant; or (3) it is in the best interest of the Program. In general, commenters expressed support for the exemptions provision, but again had concerns about the affordability of EBT, the need for a cost analysis and uncertainty as to what constitutes ''is in the best interest of the Program.''

Pursuant to section 17(h)(12)(C) of the CNA, an exemption to EBT implementation may be requested if a State agency can demonstrate to the satisfaction of the Secretary that EBT is not operationally affordable. When the proposed rule was published, all WIC State agencies would have been required to conduct a cost analysis during their EBT planning process in order to ensure EBT operational costs after implementation are affordable within their individual NSA grant. The requirements of FNS Handbook 901, which outlines the approval requirements for State agency technical projects, to include EBT, have since been streamlined and a cost analysis is no longer required of a State agency. This procedural change addresses commenters' concerns regarding the requirement to conduct a cost analysis for EBT approval. If a State agency requests an affordability exemption, the State agency must analyze costs to determine EBT affordability and provide this analysis to the Department. Accordingly, the provision allowing an exemption if EBT operational costs are not affordable within a State agency's NSA grant is retained in the final rule at § 246.12(w)(2)(ii) as proposed.

While the majority of commenters were in full support of the proposed language at § 246.12(w)(2)(iii), one commenter sought further clarification on what constitutes an allowable exemption based on ''is in the best interest of the Program.'' The Department is hesitant to establish regulatory criteria specifying scenarios or situations that would constitute such an exemption. Although EBT implementation by October 1, 2020 is mandated by law, the Department remains cognizant of the impact of EBT implementation on State agencies, vendors and WIC participants. There may be unusual circumstances within the State agency which may indicate EBT would not improve benefit delivery or would negatively affect WIC participants. Since this type of exemption would arise on a situational basis, the Department will evaluate each request on a case-by-case basis to determine if such an exemption would be in the best interest of the WIC Program. Therefore, § 246.12(w)(2)(iii) of this final rule retains the proposed language allowing an exemption to EBT implementation if a State agency demonstrates to the satisfaction of the Secretary such an exemption would be in the best interest of the Program.

No comments were received on the provision regarding exemptions based on unusual technological barriers; therefore, this provision remains as proposed at § 246.12(w)(2)(i).

Under the proposed rule, § 246.12(w)(3) would have limited approved exemptions to no more than three years, as the Department thought this is a reasonable timeframe for a State agency's situation to change relative to the ability to implement EBT. Further, if an exemption is granted, it would not relieve a WIC State agency of the annual EBT status reporting requirement proposed in § 246.4(a), as the State agency would still have to demonstrate its progress toward EBT statewide implementation. One commenter noted it would be highly unlikely a State agency receiving a three-year exemption on the basis of affordability would suddenly be able to afford EBT three years later. The Department understands this concern; however, technology costs tend to trend downward over time and the concern in part rests on speculation regarding the State agency's ability to obtain the needed funds in three years. While such cost trends are not possible to predict at this time, an exemption of three years continues to place responsibility on each WIC State agency to continue exploring options for implementing EBT within their funding level. Additional exemptions may be granted on a case by case basis within the criteria described in this regulation. Also, the State agency may realize cost efficiencies in other areas of nutrition services and administration which result in more funds within the grant being available to support EBT costs.

Consequently, the provision limiting any exemption to the 2020 mandate to a three year period is retained in this final rule at § 246.12(w)(3).

3. Electronic Benefit Requirements. Last Date of Use—Section 246.12(x)(2)(iii)

The Department proposed in § 246.12(x)(2)(iii) the last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance, when it may be the end of the month or cycle for which the electronic benefit is valid. Several commenters expressed concern that because benefit months may vary in length from 28 to 31 days, this language required additional clarification. In 2007, the Department issued Policy Memorandum 2007–01, permitting a State agency to issue a food benefit from the first of the month through the last day of the month. To clarify further, the Department added language to § 246.12(x)(2)(iii) based upon our 2007 policy memorandum, permitting a State agency to shorten the 30-day benefit period for February to 28 or 29 days. A conforming amendment has been made to § 246.12(f)(2)(iii).

4. EBT Management and Reporting: Section 246.12(y)

Section 17(h)(12)(B) and (D) of the CNA require that each State agency be responsible for WIC EBT coordination and implementation and provide status reports on their EBT implementation progress. The proposed rule at § 246.12(y) outlined EBT management and reporting requirements, to include that State agencies must follow the Advanced Planning Document (APD) process, consult with State officials if incorporating additional programs in the WIC EBT project, have an active EBT planning project by August 1, 2016 and submit EBT status reports through their annual State Plan.

The APD process requires the State agency to submit Planning and Implementation APD's and appropriate updates for the Department's approval for their EBT project. Only one comment was received related to this provision. The commenter noted the need to streamline the APD process to promote faster implementation timeframes, especially given the fact that both on-line and off-line technologies are proven and cost-effective. After publication of the proposed rule, the Department revised the APD process for WIC EBT project approvals in order to streamline and improve the outcomes of the Planning APD (PAPD) and Implementation APD (IAPD). These changes have been published in a revised FNS Handbook 901. In particular, the PAPD no longer requires a cost analysis, which was discussed earlier in this preamble, or an alternatives analysis, which specifically evaluated on-line and off-line technologies to determine the best option for the State agency. The alternatives analysis was determined to be optional as many State agencies already know which technology choice is optimal for their State. If, however, a State agency anticipates the need for an exemption to implement EBT based on affordability, or is unsure of the best technological approach to EBT, the Department continues to support and encourage State agencies to complete further analyses.

Recognizing the need for and the benefits of thorough planning and project management to fully meet the requirements to receive approval for Federal funding for EBT established by the Department, the provision requiring State agencies to follow Department APD requirements is retained in this final rule as proposed at § 246.12(y)(1).

Under the proposed rule, State agencies would have been required to consult with other benefit programs if they were considering obtaining an EBT benefit delivery method supporting WIC and one or more other benefit programs. One commenter representing vendors recommended the Department take this consultation a step further and require State agencies planning for WIC EBT to consult with State officials administering SNAP EBT in their respective State, regardless of whether a joint benefit delivery method is planned. The commenter noted the significant overlap in participation and authorized vendors between WIC and SNAP and suggested that every effort should be made to integrate the two Programs' benefit delivery methods. The Department recognizes the potential benefits of the two State agencies consulting on EBT implementation options and encourages WIC State agencies to work with SNAP officials when appropriate. However, we believe the provision is adequate as proposed due to WIC State agency variability in infrastructure, policy requirements or other factors. Consequently, the final rule retains the provision as proposed at § 246.12(y)(2) requiring consultation with State agency officials if a State agency plans to incorporate additional programs in the WIC EBT system.

To ensure progress is made towards the goal of nationwide EBT implementation by October 1, 2020, the proposed rule at § 246.12(y)(3) would have required each State agency to have an active WIC EBT project by October 1, 2015. An active EBT project is defined as a formal process of planning, implementation or statewide operation of WIC EBT. Four commenters were in full support of this requirement as proposed and three commenters asked for additional flexibility in the timeframe due to extenuating circumstances and/or lack of funding. The Department recognizes planning and implementation for EBT projects is a lengthy and complex process and lack of funding may be an inhibiting factor in some State agencies. However, the magnitude of executing a WIC EBT project requires dedicated staff and resources and should not be underestimated; a typical EBT project currently takes 2–3 years to progress from planning to implementation of EBT statewide. As the EBT implementation mandate is required by law, it is incumbent upon each State agency to begin the planning process well ahead of the mandate to ensure compliance. Therefore and consistent with this concern, the provision requiring an active EBT project by October 1, 2015, is modified in this final rule at § 246.12(y)(3) to require each State agency to submit a plan 90 days after the effective date of this regulation.

The Department also recognizes that some WIC State agencies operate in remote areas with limited access to vendors who can provide WIC foods. In some instances, these State agencies have implemented food delivery methods such as direct delivery to meet the needs of their WIC participants. There are other State agencies with substantial cost concerns or other considerations they believe would qualify for an exemption under the CNA. The Department understands these considerations but continues to expect State agencies to initiate an EBT planning initiative to formally explore the viability of EBT in their area of operation. The planning process will enable the State agency to gather appropriate information on available implementation alternatives and assess if an exemption is warranted.

Pursuant to section 17(h)(12)(D) of the CNA, each WIC State agency must submit to the Department an EBT project status report to demonstrate the progress of the State agency toward statewide implementation. Under the proposed rule, § 246.4(a) and § 246.12(y)(4) would have required an annual update of the State agency's goals and objectives regarding EBT implementation to be submitted as part of the State agency's State Plan of

Operations. The annual update would also document the State agency's progress toward accomplishing EBT implementation by the 2020 deadline, or if already implemented statewide, address any updated information for future EBT activities, plans for EBT updates, re-procurements, or other major activities impacting EBT. The Department received 11 comments regarding the annual reporting requirement, most of which were supportive of the proposal. Several recommended that a report not be required from a State agency if there were no changes to EBT operations since last report. One commenter also recommended a bi-annual reporting cycle rather than an annual cycle.

The Department recognizes the time and effort State agencies incur gathering information and reporting to the Department. However, the status of EBT implementation is of interest to Congress and many of the Program's stakeholders and has critical resource implications. Since the State Plan of Operations is updated annually, the Department believes the proposed requirement is both timely and consistent with current annual reporting requirements and is well understood by State agencies and provides the necessary information the Department requires for adequate oversight of the EBT implementation mandate. Regarding the proposed requirement at § 246.12(y)(4)(ii) requiring an annual State Plan update for State agencies operating statewide EBT, the Department believes this is necessary to inform the Department of any information impacting EBT operations, to include new EBT procurements. To minimize the reporting burden, a State agency that is EBT statewide may indicate no changes have occurred since the previous reporting period, if appropriate. A State agency with an active EBT APD may cross reference the details from the APD in their annual State Plan update to minimize the reporting burden. Consequently, the provisions for requiring annual EBT project status reporting through the annual State Plan are retained in this final rule as proposed at § 246.4(a) and § 246.12(y)(4).

5. EBT Cost Impositions on Vendors: Sections 246.12(h)(3)(xxvii–xxx) and 246.12(aa)

Section 17(h)(12)(E)(i) of the CNA prohibits the imposition of costs on vendors for EBT equipment and systems used solely to support the program (*i.e.,* single-function equipment). Sections 17(h)(12)(E)(ii) and (iii) of the CNA outline requirements for cost sharing of EBT equipment or systems not solely dedicated to transacting WIC EBT and guidelines for imposing processing and interchange fees and costs on vendors transacting WIC benefits. The CNA provisions related to cost impositions on vendors were incorporated into the proposed rule at § 246.12(h)(3)(xxvii–xxx) and § 246.12(aa). A total of 73 comments were received on these provisions and are discussed below.

Cost Prohibitions. Section 17(h)(12)(E)(i) of the CNA prohibits the imposition of costs on authorized vendors for single-function EBT equipment and systems. Two comments were received directly related to this provision, voicing concern that the potentially high costs associated with EBT equipment incurred by the retailer might be prohibitive, resulting in the retailer deciding WIC authorization is no longer viable. While the Department understands these concerns, the full costs of WIC single-function equipment will be borne by the State agency prior to statewide implementation and appropriate cost sharing will occur for multi-function cash register equipment and systems. This should eliminate undue hardships on WIC authorized vendors prior to statewide implementation. Therefore, the proposed provision has been modified at Section 246.12(aa)(4) to clarify the State shall continue to pay ongoing maintenance, processing fees and operational costs of single-function equipment when EBT is implemented statewide.. Section 246.12(g)(5) has been removed because the CNA superseded the prior cost prohibition language.

Criteria for Cost Sharing. Section 17(h)(12)(E)(ii) of the CNA requires the Secretary to establish cost sharing criteria to be used by WIC State agencies and vendors for equipment or systems that are not solely dedicated to transacting EBT for the WIC Program (*i.e.,* multi-function equipment). Under the proposed rule at § 246.12(aa)(2), State agencies would have been required to use cost sharing criteria in accordance with Federal cost principles set forth in 2 CFR part 200 (Uniform Administrative Requirements, Cost Principals and Audit Requirements for Federal Awards) to establish cost sharing criteria with their authorized WIC vendors for costs associated with any multi-function equipment.

A total of 13 comments were received on the cost sharing criteria provision. One commenter was in full support of the provision as proposed. Five commenters were supportive, but requested clarification on terminology and expansion on the provision. Seven commenters were opposed to the provision, stating the proposed regulation was not consistent with the HHFKA, may be cost prohibitive for State agencies, or did not allow for State agency flexibility.

A number of commenters wanted clarification and expressed concern regarding what is meant by the term ''equipment'' as it applies to this provision, some suggesting the term ''commercial equipment'' be used when referring to the need for cost sharing criteria. While the Department recognizes the provision applies primarily to multi-function equipment or systems, the Department does not want to limit the type of equipment or system that may be subject to cost sharing. The Department, as explained earlier in the preamble, refers to multi-function equipment to include commercial equipment. To clarify, ''equipment'' can refer to commercially-obtained hardware with WIC EBT software owned or leased by a vendor from any of the cash register and payment system providers available in the market. Multi-function equipment can also refer to stand-beside equipment (and appropriate software) such as a card reader (magnetic stripe and/or smart card), display screen, PIN pad, printer and barcode scanner which are not integrated into the cash register. The stand-beside equipment may be a limited Point of Sale (POS) device with WIC EBT functionality, a POS device supporting WIC EBT and SNAP or cash EBT payments, or it may be an integrated cash register system installed separately in the checkout lane next to the existing electronic cash register. Ownership of the equipment can rest with the vendor, a third-party provider such as an acquirer, the State agency, or the State agency contractor. Other items considered equipment or part of EBT include a telephone line or Internet connection to submit purchases for an on-line approval, to submit daily EBT claim files for payment in an off-line environment, or to exchange the Authorized Product List (APL) and other files necessary to support a WIC EBT purchase.

Several commenters asked for clarification on whether the cost sharing requirement should be between the WIC Program and SNAP, rather than the vendor, if the stand-beside equipment supports both programs. Additional concerns were raised related to perceived discrepancies in the regulatory language in the cost sharing section and minimum lane coverage section regarding EBT equipment, with the point being made that as stated in the proposed rule at § 246.12(aa)(2), WIC Program equipment would only be

provided for use by the State agency as Stand-beside equipment and used solely by the Program and would therefore not be subject to cost sharing agreements.

If the equipment is single-function equipment, it is not subject to cost sharing. However, if the equipment is multi-function equipment, a cost sharing agreement between the State agency and vendor would be required if any costs are shared. Such agreements may reflect other state programs that may be included in the agreement. The Department has revised § 246.12(aa)(2) to clarify that cost sharing agreements shall be developed between the State agency and the vendor, depending on the type, scope and capabilities of shared equipment.

One commenter requested a review of the HHFKA language that corresponded with the provision set forth in the proposed rule, stating the proposed rule indicated State agencies shall establish cost sharing criteria, but the HHFKA indicated the Secretary shall establish criteria for cost-sharing. As discussed in the preamble language of the proposed rule, shared costs must be allocated, or fairly distributed, among all benefiting parties in accordance with the established Federal cost principles set out at 2 CFR part 200. Compliance with these Federal principles provides reasonable assurance the Federal Government and the State agency bear their respective fair share of costs incurred by the State agency to administer Federal assistance programs. To provide clarification and consistency and to ensure regulatory language does not become outdated/obsolete, this provision has been revised at § 246.12(aa)(2), requiring State agencies to develop cost sharing criteria following the Federal guidance established for cost allocation principles. This clarification underscores that Federal cost guidance establishes cost allocation principles, as required by the HHFKA and State agencies will use these principles to develop cost sharing criteria. The specific proposed reference to 2 CFR part 225 has been replaced by a general reference to Federal cost allocation principles to mitigate confusion in the future should the Federal regulations be revised or renumbered. The cost principles now reside at 2 CFR part 200.

To date, the Department has remained flexible in its approval of proposed State agency cost sharing criteria because of differences in State agency funding and operations that lead to variations; consequently, one set of cost sharing criteria does not fit all. To provide reasonable assurance Federal cost allocation principles are being followed and the approach is applied fairly to all authorized WIC vendors, the State agency must furnish its allocation and/or cost sharing methodology to the Department for review and approval before incurring costs as part of the established APD approval process outlined in Handbook 901. As noted previously, § 246.12(y)(1) of the final rule requires adherence to the APD process.

Processing Fees. As provided in section 17(h)(12)(E)(iii)(I) of the CNA and incorporated into the proposed rule at § 246.12(h)(3)(xxviii) and § 246.12(aa)(3)(i), WIC authorized vendors would have been required to pay commercial processing costs and fees if multi-function equipment was utilized for WIC and other transactions. A vendor using multi-function equipment would pay commercial transaction processing costs and fees, imposed by a third-party processor, if the vendor elects to use commercial providers to connect to the State's EBT processing system. Five comments were received on this provision. Three were in full support of the proposed requirement and two commenters requested the Department to clarify: (1) The provision applies only to multi-function equipment; and (2) the complete regulatory language for this provision. While this final rule at § 246.12(h)(3)(xxviii) and § 246.12(aa)(3)(i) retains the intent of the proposed provision prohibiting State agencies from incurring third-party processing costs and fees for vendors that elect to accept EBT using multi-function equipment, the regulatory language has been modified slightly at § 246.12(aa)(3)(i) for clarity.

As noted, typically processing fees are not charged to vendors who accept WIC EBT equipment from a State agency or its contracted EBT provider if the equipment is single-function equipment. A WIC State agency is responsible for these processing fees and ongoing costs. The proposed rule at § 246.12(aa)(4)(i) would have permitted such processing fees to be charged to all WIC vendors after statewide implementation whether or not the equipment was single-function or multi-function. In response to related comments not specific to this provision; the proposed language is modified in the final rule at § 246.12(aa)(4)(i) to prohibit processing fees from being charged by a State agency or its contractor to WIC vendors for use of single-function equipment.

Interchange Fees. Section 17(h)(12)(E)(iii)(II) prohibits interchange fees on WIC EBT transactions. An interchange fee is the term used in the payment card industry to describe a fee paid between banks for the acceptance of card based transactions. Interchange fees are currently paid by retail merchants for credit and debit card transactions in the commercial environment, but not for WIC or SNAP EBT transactions. Under the proposed rule, interchange fees would not have applied to WIC EBT. Additionally, language reflecting this prohibition would have been added to WIC vendor agreements, prohibiting the WIC vendor from charging the State agency for any interchange fees. Eight commenters addressed the proposed provision; seven were in full support of the proposed prohibition and one commenter was in support but requested the language be made clearer in the final rule. Consequently, the provisions prohibiting interchange fees from applying to WIC are modified slightly in the final rule at § 246.12(h)(3)(xxix) and § 246.12(aa)(3)(ii) and clearly state that a State agency shall not pay or reimburse the vendor for interchange fees on WIC EBT transactions.

Costs After Statewide Implementation. Section 17(h)(12)(E)(iv)(I) of the CNA permits State agencies that have implemented EBT statewide to no longer be required to incur the cost of ongoing maintenance of EBT multi-function cash register systems and equipment. Under the proposed rule at § 246.12(h)(3)(xxx) and § 246.12(aa)(4)(i), all costs for ongoing maintenance, equipment and operational expenses essential to and directly attributable to, EBT after statewide expansion would have been unallowable for both single-function and multi-function equipment, unless the State agency determined the vendor was needed for participant access.

The Department received numerous comments regarding the proposed regulations pertaining to vendor equipment and maintenance costs. Four comments in support of this requirement were received from WIC State agencies and participant advocates. Two large national retailer associations expressed concern the proposed elimination of State-supported single-function EBT equipment was not consistent with the HHFKA and would require vendors to shoulder the financial costs associated with EBT implementation. A payment industry association expressed concern the proposed requirement to eliminate State agency financing of single-function equipment may have a chilling effect on expansion of WIC EBT nationwide by 2020. Several commenters from the industry and State agencies urged the

Department to clarify whether the provision applied only to commercial equipment owned by a WIC vendor versus equipment installed and owned by a State agency or its EBT contractor.

After consideration of these comments, the Department has modified the final regulation to require a State agency to continue support of ongoing maintenance, processing fees and operational costs for single-function equipment or multi-function equipment if the vendor is necessary for participant access.

Two commenters raised concern that prohibiting ongoing maintenance fees after statewide implementation would not support small businesses or grocers in rural areas not able to afford an integrated system or ongoing maintenance costs, but who may be integral to the program in regards to participant access to benefits. The Department understands this concern. To remain consistent with legislative exceptions permitting State agencies to provide single-function equipment on behalf of the vendor, the provisions in this final rule at § 246.12(h)(3)(xxx) and § 246.12(aa)(4)(i) have been revised to require the State agency to pay ongoing maintenance and operational costs for single-function EBT equipment. A State agency may elect to share in the costs for multi-function equipment if the State agency determines the vendor is necessary for participant access. The wording was changed from ''needed'' for participant access to ''necessary'' for participant access to align with the legislative language and to clarify the intent of the provision. Additionally, a technical amendment is added to § 246.12(h)(3)(xxx) to correct a typographical error in the title in the proposed rule, clarifying the provision applies to EBT ongoing maintenance and operational costs.

One advocate organization commented that farmers and farmers' markets should be given special consideration in applying the provisions of the post-statewide equipment installation rules which preclude State agencies from sharing in the cost of WIC EBT equipment. While the Department shares in the goal of enhancing access to fresh fruit and vegetables made available by farmers and farmers markets, it could be cost prohibitive for State agencies to equip every authorized farmer or farmers' market. Therefore, § 246.12(h)(3)(xxx) and § 246.12(aa) of the regulation have been amended to apply to all authorized WIC vendors and also apply to authorized farmers and farmers markets and prohibit costs for ongoing maintenance, equipment and operational expenses of an EBT benefit delivery method after EBT statewide, if the equipment is multi-functional.

Capability To Accept EBT Benefits. Section 246.12(aa)(4)(ii) of the proposed rule provided that once a State agency has implemented EBT statewide, WIC vendor applicants would have been required to demonstrate their capability to accept WIC EBT benefits electronically prior to authorization. In essence, the applying vendor would have been required to be ''EBT capable'' at the time they applied and there would have been no obligation for the State agency to provide funds to cover EBT costs in order for the vendor to participate in the program. When there is a need to ensure participant access to food benefits, a State agency would have been permitted, with USDA approval, to fund applicant vendor costs to obtain an EBT capable cash register system.

A total of 19 comments were received on this proposed provision. Seven comments, all from WIC State agencies, were in full support of the proposal, noting it is a vendor's decision to seek WIC authorization and WIC Program funds should not be used for this purpose except if participant access is an issue. Other commenters expressed concerns as to the meaning of EBT capable/EBT ready, the upfront investment needed by the vendor to become EBT capable without assurances the vendor's application for WIC would be accepted and the disadvantage that smaller vendors would face due to cost constraints.

To address several commenters' questions and concerns on what EBT capable means, a broader discussion follows. WIC EBT delivery methods require the capability to process WIC EBT benefits by exchanging claim files and hot card files in off-line environment and transmitting on-line purchases to the EBT host for approval, which requires either a telephone or Internet line. Both on-line and off-line WIC EBT delivery methods require transmittal of the approved product list (APL), the electronic food list distributed by each State agency, at least every 48 hours.

WIC EBT also requires the vendor system to maintain the APL in order to match scanned food items' UPC (Universal Product Code) or Price Lookup Codes (PLU) to ensure they are on a States' APL. The one to one match is not necessary in a SNAP EBT transaction; consequently a SNAP authorized retailer does not necessarily have the capability to support WIC EBT transactions.

Therefore, WIC EBT capable would mean the vendor equipment and software is able to accurately scan or enter WIC food item UPC/PLU codes, match them to the APL, determine if the WIC food balance on the participant's card is sufficient to purchase the item and calculate the amount of the transaction. The vendor must also submit a claim file for payment in off-line EBT environment. The electronic cash register system must do this while managing WIC and non-WIC items (if multi-functional), the sales tax for non-WIC items and a variety of promotions or discounts, as appropriate.

Several comments were received regarding concerns that significant investments in cash register equipment and software may be incurred by a vendor who is applying for authorization to accept WIC before the vendor is determined to be eligible by a WIC State agency. A commenter suggested a two-stage vendor authorization process for State agencies to provide provisional authorization that a vendor could receive if they met a State agency's vendor criteria before determining their EBT capability. The Department is not requiring new vendor authorization criteria in this rulemaking. Nonetheless, we recognize a two-step authorization process may be a practical approach for a State agency to consider. To assist applicant vendors in selecting an EBT capable system, State agencies should compile and maintain a list of certified systems the applicant can consider. This list would neither represent an endorsement for the listed systems nor prevent a prospective vendor from obtaining a different system.

One commenter representing a State agency expressed concern that the return on investment made prior to statewide operations was not defined in the proposed rulemaking. The commenter suggested that if a State agency shared in the cost of implementation, policies should be established to allow recovery of a prorated share of the investment if the vendor was terminated (voluntary or involuntary). State agencies already have this ability, as current Department guidelines permit State agencies to recoup a portion of any investment in vendor equipment in the event of termination. The Department does not believe this should be included in Federal regulations; rather, the Department recommends this be addressed in appropriate State agency policy and vendor agreements.

One commenter representing a retailer association expressed concern that State agencies should have flexibility to share in the cost of retail equipment and software certifications even after the State agency implements EBT statewide.

To date, State agencies have conducted tests to certify that a specific cash register system is capable of supporting all WIC EBT functions. The commenter further noted that the proposed rule was not clear on what constituted the requirements or timeframes of determining EBT capability. The commenter expressed concern this uncertainty could negatively impact the authorization of new chain stores or small businesses if a new EBT system or third party processor is used. The Department recognizes some situations may result in a significant increase in vendor costs for certification and may lengthen authorization timeframes. The Department encourages State agencies to work with new vendors seeking WIC authorization to minimize costs and timeframes to become an authorized WIC vendor. However, while the Department understands vendors may incur additional costs related to certifications after statewide EBT is achieved, the primary concern is to ensure participant access to WIC benefits. Therefore, as stated in the proposed rule, the State agency would have the option to elect to fund such an expense in the event there was a need to ensure WIC participant access.

The Department acknowledges and appreciates the various viewpoints and comments submitted related to vendor capability to accept WIC EBT benefits. However, the language in the proposed rule that would have required the vendor demonstrate EBT capability prior to authorization unless the vendor is determined to be necessary for participant access is considered appropriate and necessary and complies with the CNA. The Department has modified the proposed language at § 246.12(aa)(4)(ii) to further clarify the requirement for vendors to demonstrate their systems are EBT capable.

6. Minimum Lane Coverage Guidelines

Section 17(h)(12)(F) of the CNA requires that the Department establish a minimum standard for installing WIC EBT equipment, or terminals, in WIC vendor locations. The proposed rule at § 246.12(z)(2) provided a national WIC EBT vendor equipment coverage formula that would have been consistent from state-to-state and established a minimum level of equipage for POS terminals used to support the WIC Program. The proposal was consistent with the legislative requirement to establish national standards for implementation of WIC EBT, including standards for lane coverage for payment terminals to accept WIC EBT transactions. These minimum standards apply to all systems and equipment used to support WIC EBT, whether the equipment is multi-functional or used solely for the WIC Program.

Section 246.12(z)(2) of the proposed rule would have required a WIC EBT equipment installation formula similar to the SNAP equipment installation requirements. Specifically, under the proposed rule, WIC vendors would have been required to install a commercial multi-function terminal or a government-provided stand-beside terminal in their checkout lanes as follows: For superstores and supermarkets, one POS terminal for every $11,000 in monthly WIC redemption; and, for all other authorized WIC vendors, one terminal for every $8,000 in monthly WIC redemption. As a vendor's WIC redemption reaches the next equipment threshold, they would be eligible for an additional terminal if equipped by the State agency under the formula proposed by the Department or an alternate formula approved by the Department. POS terminals would have been installed up to a maximum of four lanes, but not more than the number of lanes in a WIC vendor location. This formula does not require all lanes to be equipped for stores conducting more than 15 percent or more of their food sales in WIC business, which differs from the SNAP regulations but is consistent with the provisions in the CNA. The proposed rule would have allowed a State agency to use an alternative installation formula with Department approval. Additionally, § 246.12(z)(2)(iii) of the proposed rule would have required a State agency to determine the number of terminals that would be installed to support authorized farmers or farmers' markets.

This section of the proposed rule received 26 comments from State agencies, advocates, WIC vendor associations and members of the electronic funds transfer industry. Many commenters expressed concern that the proposed lane coverage guidelines may be cost prohibitive for State agencies and/or vendors and funding constraints for all stakeholders should be taken into consideration when establishing guidelines. Other concerns were that the equipage requirements did not allow for variances among WIC State agencies, the use of the SNAP POS terminal equipage formula was applied arbitrarily and the experience among EBT WIC State agencies to date was insufficient to require a single equipage formula nationally that applied to all WIC State agencies. Several commenters suggested adding a requirement that POS devices support multiple programs, most notably SNAP.

For the purposes of this equipment formula, State agencies may use the U.S. Census Bureau Census on Retail Trade definition of supermarkets as retail establishments having sales over $2 million annually in food, which is consistent with the SNAP definition for supermarkets. Supercenters or superstores are retail establishments primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture and appliances. A State agency that requires SNAP authorization as a criterion for authorization of a WIC vendor may also reference the store categories utilized by SNAP.

The Department believes the proposed POS equipment lane coverage formula allows for a consistent standard for the minimum number of lanes necessary to permit WIC participants to purchase their WIC foods using an EBT card. After evaluating both current WIC EBT State agency practices concerning lane equipage and SNAP equipment installation requirements, the Department believes the proposed equipment formula represents a reasonable and consistent basis to allow WIC participants to purchase their WIC foods in the same manner as all other non-program customers.

Numerous commenters suggested using a range of redemption values to determine lane equipage and to give State agencies more latitude in determining how to equip vendors with POS equipment based on State agency needs, technology and funding availability. The Department recognizes the variation among WIC State agencies and proposed a State agency be given flexibility to devise a formula fitting its specific environment if the national terminal coverage formula does not meet a specific State agency situation. Therefore, the proposed language at § 246.12(z)(2)(i) and (z)(2)(ii) is retained in the final rule and allows WIC State agencies to utilize an alternative terminal equipage installation formula with Department approval. This provision should allay State agency concerns that the national terminal equipage formula does not adequately consider a State agency's unique needs.

The Department understands there are scenarios where a vendor may choose not to install WIC EBT capable commercial equipment in every lane. As noted by a commenter, the preamble to the proposed rule assumed all vendors utilizing integrated multi-functional cash register systems would choose to equip all of their lanes with WIC

functionality. The Department agrees with the commenter and wishes to clarify that we encourage EBT transactions to be integrated into each WIC vendor's checkout lanes to allow WIC EBT cards to be utilized in all lanes both to promote efficiencies and to improve WIC benefit delivery, but it is not necessarily a universal business practice among vendors, nor is it a requirement.

While many vendors may prefer to integrate WIC EBT into their existing POS equipment, vendors may find integration costs prohibitive and therefore elect to use a single-function POS terminal for WIC transactions or may choose to have limited lanes integrated to accept WIC EBT. One commenter noted that when a vendor elects to equip fewer lanes than would have been required by this regulation, the State agency would have been required to install the additional stand-beside equipment at State agency expense. Prior to statewide EBT implementation, this would be the case. The Department recognizes the need may arise to install separate single-function terminals prior to statewide implementation either on an interim basis in order to allow more time for a WIC vendor to upgrade to an integrated system or as a permanent POS solution. As noted earlier in the preamble, retailer equipage would be included as part of a State agency's retailer enablement plan and would address the number and type of POS equipment in each vendor location. Once statewide EBT is achieved, the provision at § 246.12(aa)(4)(i) applies. Any ongoing State agency support for stand-beside terminals would be subject to a State agency's determination the vendor was necessary for participant access.

A few commenters noted the lane coverage formula was inconsistent with the requirement that WIC vendors offer WIC customers the same courtesies as other customers as required in current regulations at § 246.12(h)(3)(iii). The Department also recognizes the use of stand-beside equipment is not optimal for WIC participants because they must separately scan their WIC food items to complete the WIC portion of their purchases. Scanning and entering price information twice will be slower compared with the scanning process for other store customers. However, as noted previously, it may not be feasible or affordable for WIC vendors or a WIC State agency to equip all lanes with WIC functionality in excess of the minimal lane equipage formula using either additional stand-beside equipment or multi-functional terminals. The State agency and WIC vendor would need to take steps to ensure WIC customers are directed to the WIC EBT capable lane(s) without designating these lanes as usable only by WIC customers. This could be done through the use of appropriate signage such as ''WIC EBT accepted here.'' Provided a WIC vendor is complying with the lane equipment formula, a requirement to check out in specific lanes capable of accepting a WIC EBT card is not treating WIC customers differently than other customers provided the WIC lanes could also be used by other customers.

Although we have noted not all WIC vendors will choose to integrate WIC EBT into any and/or all of their POS devices, based on the experience with SNAP, the Department expects the majority of WIC vendors to equip all of their checkout lanes when they utilize commercial multi-functional WIC EBT capable solutions due to increased efficiencies and convenience in the checkout lanes for all customers. Given the concerns expressed about all lanes being WIC EBT capable for improved customer service versus the cost prohibitions to both WIC State agencies and authorized WIC vendors for doing so, the final rule modifies § 246.12(z)(2) to require that lanes be equipped according the formula regardless whether the equipment is single-function or multi-function. The final rule retains the equipage formulas at § 246.12(z)(2)(i) and (z)(2)(ii) as proposed.

Commenters also expressed support for minimizing deployment of two POS terminals in a single checkout lane, one for WIC and one for SNAP, with one commenter suggesting joint WIC and SNAP EBT POS capabilities be a requirement. As noted in the preamble to the proposed rule, some WIC State agencies have worked with their SNAP agencies to acquire WIC and SNAP EBT services through a single contractor. This permits a single POS terminal to be installed in authorized vendor locations accepting both WIC and SNAP benefits. The Department expects the WIC State agency will consult with the SNAP EBT agency during planning to identify opportunities where vendor equipage could be coordinated and instances of duplicate equipment can be minimized. However, the Department recognizes separate terminals may be unavoidable in some instances due to contractual and funding issues and the need to upgrade software and other infrastructure to support transactions from the two programs. Because of these issues, the final rule is retained as proposed and does not require a single POS terminal capable of allowing both WIC and SNAP purchases.

Two commenters suggested amended language to protect a State agency from bearing fiscal liability in instances where a vendor is removed from the WIC program after receiving reimbursement from a State agency to acquire WIC EBT capable multi-functional equipment, especially after statewide implementation. One commenter was concerned policy guidance would be needed in a situation when a vendor is removed from participating in the WIC Program but has accepted reimbursement from the State agency prior to the removal. In such situations, the State agency may not be able to get a full return on the funds provided. When a State agency has devised a retailer enablement plan that includes investment in equipment owned and operated by individual vendors, the State agency must address recoupment of this investment. Some State agencies have added a provision to vendor agreements which allows the State agency to recover a pro rata share of any funding from a WIC vendor terminated or removed from the program. It is appropriate for State agencies to include recoupment of federal investment in their WIC vendor agreements or other agreements entered into regarding WIC EBT equipment.

Two commenters requested modification of the proposed language at § 246.12(z)(2)(v) which would have allowed an authorized vendor who has been equipped with a terminal by the State agency to submit evidence that additional terminals are necessary after the initial POS terminals are installed. One commenter suggested the additional terminals be added at the expense of the vendor. Another commenter requested timeframe limitations for requesting additional terminals be incorporated into the regulatory language, *e.g.* the vendor must request additional terminals within one year from the initial POS installation or prior to statewide rollout, whichever is sooner. To allow for greater State agency flexibility and to provide WIC authorized vendors an opportunity to request additional POS equipment should their business operations change or expand indicating the need for additional WIC EBT equipment, the language at § 246.12(z)(2)(v) remains as proposed.

No comments were received on the proposed provisions at § 246.12(z)(2)(iv), (z)(2)(vi) and (z)(2)(vii), which dealt with equipping vendors necessary for participant access, terminal equipage for obtaining benefit balances and the removal of excess terminals in the event of reduced redemption activity, respectively.

Therefore, these provisions remain as proposed.

Section 246.12(z)(3) of the proposed rule would have required the State agency to ensure vendors, farmers, farmers' markets and home food delivery contractors are paid promptly. Although the proposed rule did not mention farmers' markets which was an oversight by the Department, we have added farmers' markets to 246.12(z)(3) in this final rule. Payment must be made in accordance with the established Operating Rules and technical requirements after a valid electronic claim for payment has been submitted. Ten comments were received on this topic with the majority of the commenters indicating that the preamble language did not accurately reflect decisions made via the Operating Rules technical workgroup with regard to the timing of when a State agency should pay vendors. At the time the proposed rule was published, the Operating Rules required payment within two days of submitting a valid electronic claim for payment; subsequently the Operating Rules have been updated to require payment within two processing days of receipt of the claim for payment but allow exceptions to allow payment up to five days after receipt by the State agency. The Department acknowledges this generally accepted practice. However, the Department feels the number of days for submitting a valid claim for payment should not specifically be stated in the regulatory language, but rather is appropriately addressed in the Operating Rules. Consequently, the proposed language at § 246.12(z)(3) is retained as proposed.

7. Technical Standards and Requirements

General. Section 17(h)(12)(G) of the CNA states that the Secretary shall establish technical standards and operating rules for WIC EBT and requires each State agency, contractor and authorized vendor participating in the WIC Program demonstrate compliance with established technical standards and operating rules. Two of the most comprehensive compilations of the standards and rules established for WIC EBT are the EBT Operating Rules and the Technical Implementation Guide (TIG), both of which were thoroughly discussed in the preamble of the proposed rule. The Department also requested comments on retail vendor certification procedures, the WIC Universal Management information System MIS–EBT Interface specification and other issues discussed in the preamble; and the minimum timeframes that would have been required for replacing participant benefits and the establishment of a toll-free 24-hour customer service number proposed as regulations. These comments and the Department's response to the comments are addressed below.

As indicated in the proposed regulation, the Department has long recognized the standards and operating rules must be followed to facilitate EBT expansion efficiently and consistently from State to State and has worked collaboratively with State agencies and industry to establish WIC EBT standards. The proposed rule at § 246.12(bb)(1)(i) and (bb)(1)(ii) would have required State agencies, contractors and authorized WIC vendors to follow and demonstrate compliance with operating rules, standards and technical requirements as established by the Secretary, as well as to comply with other industry standards identified by the Secretary. Section 246.12(bb)(2) and (bb)(3) would have established requirements for replacing participant benefits and establishing a 24-hour toll free hotline number for customer assistance, respectively.

Under the preamble in the proposed rule, the Department sought comments on several aspects of the Operating Rules and technical standards documents in order to determine future regulatory or policy updates. A total of 87 comments were received on this section of the proposed rule. Many of the commenters requested clarification or suggested corrections to preamble language or provided general comments to preamble discussion of the operating rules, TIG, retail certifications and other standards. A discussion of each area follows.

Operating Rules and Technical Implementation Guide (TIG). The WIC EBT Operating Rules and the TIG were collaboratively developed over the past several years with State agency and industry input to address, respectively, the ''what'' and ''how'' of WIC EBT implementation. These documents have been accepted and implemented among EBT State agencies, their authorized vendors, processors and other stakeholders and have contributed to successful WIC EBT implementation and expansion. The Department's rationale for proposing the required use of the Operating Rules and TIG and maintaining these as stand-alone technical documents, allows for technological changes to be incorporated into the Operating Rules and technical standards as technology is updated and WIC EBT evolves. This process allows more timely updates to these detailed documents while still allowing stakeholder input.

Overall, commenters were in support of the proposed requirement to follow and demonstrate compliance with technical standards and operating rules. A few commenters noted it was critical to have industry input to the standards and the standards remain flexible so WIC EBT can adapt to new technology. The Department intends for flexibility to be accomplished by maintaining the documents separate and apart from the regulatory process. One commenter stated current EBT State agencies should be grandfathered in and not be required to implement new or updated standards. The Department understands this concern but feels it is critical for all State agencies to incorporate the latest standards into their EBT benefits delivery methods as soon as practical so processors and vendors can cost effectively build to the standards. To acknowledge this concern and to allow State agencies flexibility in implementing the standards, State agencies currently operating WIC EBT delivery methods will be allowed to implement the standards into their EBT delivery methods up to two years from the date of publication of this rule.

One large retailer association, while supporting the need for standards and operating rules, suggested the standards and related documents be published for public comment. As noted in the preamble to the proposed rule, the Department has established a maintenance process allowing all stakeholders the opportunity to submit change requests necessary to clarify, change or add to the rules prompted by implementation activity. This process permits stakeholders to submit a change request to the Department for consideration. Once received, reviewed and analyzed for potential impact, the change request will be published on the established collaborative Web site, discussed on a conference call and published in a final bulletin for a 30-day comment period. Once this comment period is completed, a schedule for implementation will be identified in the final change request. Updates will be issued as technical bulletins and then incorporated into the periodic update for each document. A copy of the WIC EBT Operating Rules and TIG are available on the public Web site of the Food and Nutrition Service at *http://www.fns.usda.gov/wic/ebt-guidance.* Parties interested in reviewing and commenting on these documents can obtain access to the shared WIC EBT Technical Documents PartnerWeb shared Web site by sending an email

requesting access to: *WICEBTTECH@fns.usda.gov.*

Several commenters suggested the Department be cautious in adopting commercial standards such as the Europay MasterCard Visa (EMV) Smartcard Payment System standards. For example, EMV includes technology such as Near Field Communications that, at the time of this writing, is not presently in use by any WIC EBT system to support contactless smart cards. The Department is paying close attention to EMV because we believe it is best to align EBT standards with commercial standards already in use to the greatest extent possible. Alignment with commercial standards sometimes referred to as 'piggy-backing' on commercial infrastructure, will help to reduce costs and development time for State agencies, WIC vendors and processors who must support WIC and other payment forms. This was the Department's perspective when SNAP was implementing EBT and the approach has continued. Consequently, should a State agency decide to adopt a smart card supporting Near Field Communication contactless purchases, it would be in the best interest of the WIC Program to consider adoption of the existing EMV or other industry standards.

We would like to clarify, as a few commenters noted, that the Accredited Standards Committee (ASC) X9, Inc. is the organization responsible for financial standards in the United States rather than the American National Standards Institute (ANSI), which was incorrectly referenced in the preamble of the proposed rulemaking. The two pertinent standards for WIC managed by the ASC X9 are the X9.93 messaging and file standards and the X9.131, which defines the interface between vendor card readers and EBT smart cards.

A number of commenters raised questions related to enforcement of the Operating Rules and TIG. Questions included the process by which WIC vendors and EBT processors would demonstrate compliance, which party would be required to pay the cost of compliance and how often must it be demonstrated. One commenter questioned the extent a vendor or cash register manufacturer would be responsible for State agency certification costs, such as staff time for testing and quality assurance review and travel costs. The Department strongly urges State agencies to coordinate their certifications to minimize and not duplicate the costs imposed on the industry and take advantage of collaborative certifications allowing a single certification with several State agencies at one time, to save time, and establish policy and protocols to ensure standards such as the Operating Rules and TIG are being followed. Concerns and questions pertaining to retailer capability after statewide implementation will be discussed later in this preamble. Additionally, as many of these issues are outside the purview of this regulation, the Department will provide additional guidance and policy on these questions as necessary after publication of this final rule.

The Department believes the proposed regulatory language concerning standards provides adequate flexibility to establish new and/or changes to existing standards as WIC EBT evolves and allows for appropriate input from EBT stakeholders. Therefore, the provisions at § 246.12(h)(3)(xxxi), (bb)(1)(i), and (bb)(1)(ii) requiring compliance with Operating Rules, standards and technical requirements and other industry standards established and/or identified by the Secretary are retained as proposed in this final rule. Additional discussion of these provisions follows.

Retail Vendor Certification Procedures for WIC EBT Capability. In the proposed rule, the Department expressed interest in developing procedures and guidance for the certification of retail vendor electronic cash registers and associated payment devices, to include the development of common test scripts and testing criteria. The Department sought comments on the retailer certification process, noting however that discussions and comments related to retailer certification and consequently, what a vendor would need to demonstrate to the satisfaction of the WIC State agency that its system was EBT capable, would not be incorporated into the final rule. Rather, these comments would be considered in the larger discussion among all EBT stakeholders of what should be incorporated into associated standards and rules as to what constitutes a WIC EBT capable vendor system.

Specific standards for certifying vendors or other systems that may affect a WIC EBT transaction were not proposed other than the requirement at § 246.12(aa)(4)(ii) which would have required each WIC vendor applicant to demonstrate capability to accept WIC benefits electronically after statewide implementation. Several commenters expressed the need to provide a consistent process, to develop standards and processes as quickly as possible and to involve the retail community in the development of the vendor certification process.

While no clear consensus was supported by commenters on the vendor system certifications, we did receive many useful suggestions. Some commenters suggested the Department establish a lab for manufacturers to get certified or use a centralized process for certifying cash register systems. In each of these cases, the manufacturer of the cash register software would present the system to the lab or the Department whenever modifications to software affecting WIC activities was ready or a new system was to be certified for WIC EBT functionality. Individual State agencies could then test the actual implementation by each WIC vendor by conducting a few purchases or accepting the certification conducted by another State agency. Several State agencies suggested the use of a lead State agency which would maintain a national database of certified WIC EBT capable benefit delivery methods. Under this approach, the lead State agency would act on behalf of other State agencies in conducting and coordinating vendor system certifications which would reduce cost and the level of resources that would have been required by developers and State agencies.

The Department also established a workgroup to explore the feasibility of standardizing certification procedures and test scripts. However, after meeting for more than one year, the workgroup did not reach consensus on a common approach to be followed by all parties. While the group was unable to reach consensus on the overall approach, the State agencies and industry agreed to consolidate test scripts used during certifications for each technology to standardize this aspect of the testing. These test scripts are updated and are available on the EBT Technical Documents Partner Web site for use by State agencies and industry.

As a result, the Department has determined continued Departmental involvement in the process of certifying retailer cash register systems is no longer warranted. WIC State agencies will retain responsibility for the prompt and accurate payment of allowable costs as discussed at § 246.13(d). Each WIC State agency planning to implement WIC EBT must therefore ensure that all EBT transactions are processed correctly, securely and in accordance with current WIC regulations, policy and guidance. State agencies may conduct certification tests or accept certifications conducted by other State agencies of WIC vendor systems in accordance with the WIC EBT Operating Rules. As with the paper food instrument redemption by WIC vendors, State agencies shall take actions through

the provisions of their vendor agreements and associated administrative actions when vendors are found to be noncompliant. The Department will not dictate the steps the State agency must take to ensure its EBT benefit delivery method and the systems of its WIC authorized Vendors, are operating correctly.

WIC Universal MIS–EBT Interface Specification. The WIC Universal Management Information System (MIS)–EBT Universal Interface (WUMEI), commonly referred to as the Universal Interface or simply UI, is a specification that guides systems development for data exchanged between State agency clinic MIS systems and EBT processor systems. Several comments were received suggesting the interface specification should become one of the standards identified by the Secretary as a requirement for implementation. The Department expects all State agencies to build their interfaces consistent with the Universal Interface specification. Therefore, the Department does not believe there is a need for a separate standard reiterating use of the Universal Interface specification.

Other Standards and Requirements. As noted in the preamble to the proposed rule, other standards and requirements may be necessary over time and the Department must be able to establish these standards and/or incorporate these changes into the existing technical standards and guidelines and State agencies must accommodate and implement these changes. One such proposed requirement at § 246.12(bb)(2) would have required State agencies to establish policy permitting the replacement of participant benefits within five business days following notice by the participant to the State agency, at least one time in a three-month benefit issuance period. The replacement process would enable the remaining food balances associated with an EBT card to be transferred to another card (off-line) or linked to another EBT card with the same account (on-line). Current policy gives State agencies the option to replace lost or stolen food instruments.

The Department received 20 comments on the card and benefit replacement provision of the proposed rule. Three commenters were in full support of the provision as proposed. Several commenters expressed concern both with the five business day replacement timeframe as well as with the provision requiring replacement at least once in a consecutive three-month period. Four commenters suggested the provision be made optional. Eight commenters were in support of the change, but requested the timeframe be extended beyond five business days to accurately reflect the State agencies' current WIC EBT replacement timeframe. Commenters also noted the background language contained in the proposed rule was inaccurate because it erroneously stated benefits can be lost when an EBT card is lost or stolen. To clarify, the balance of the electronic benefit at the time when a card is reported lost or stolen is transferred to a new card issued to the participant(s) or proxy and consequently, no loss of benefits occurs. Although the proposed rule did not specifically address card replacement if the card is damaged, this final rule is also applicable to replacement of damaged cards.

Under the proposed rule, the maximum timeframe that would have been required for electronic benefit replacement by an EBT State agency was five business days. Though initial implementations by off-line State agencies followed FNS policy guidance to replace lost or stolen cards within five business days, one State agency commenter indicated it could not consistently meet the standard due to constraints such as part-time outreach sites with variable hours of operation. Therefore, this State agency had established a policy permitting the replacement of the EBT card and transfer of participant benefit balances within ten days of notification. Other State agencies increased the timeframe from five business days to six because clinics could not consistently meet the five day replacement policy because it is not always possible to obtain the remaining balance immediately due to delays in WIC retail vendor settlement and in cases where off-line States clinics only operate a few days per week, particularly in remote areas.

The Department expects State agencies to replace a lost or stolen card as soon as possible, but no later than seven business days following notice by the participant or proxy to the State agency. This timeframe should allow for vendor settlement consistent with EBT business practice capabilities and recognizes limited clinic availability in some remote areas. Section 246.12(bb)(2) in this final rule has been amended to require the replacement of EBT cards and the transfer of associated participant benefit balances within seven business days following notice by the participant or proxy to the State agency.

The proposed rule included a requirement to replace participant benefits at least one time in a consecutive three-month period when a card is reported lost or stolen. This final rule has been modified to clarify that the Department intends for card replacements and the remaining associated benefits to occur routinely and as soon as possible to afford time for the participant to obtain their WIC foods for the month. It is expected that should frequent card replacements occur, the State agency will advise the cardholder of their responsibilities and the need to protect the card at all times. The State agency may also determine if additional research is warranted to rule out any program integrity concerns.

A conforming amendment was added to § 246.4(a)(14)(xix) to include a description of the process the State agency will establish to replace EBT cards and transfer the associated benefits within seven business days.

Under the proposed rule, § 246.12(bb)(3) would have required a State agency to provide a toll-free 24-hour hotline number with live representatives for EBT cardholder assistance. The toll-free 24-hour hotline was proposed to enhance customer service to WIC participants who may need to contact the State agency or a WIC clinic to report a lost or stolen EBT card, request a replacement card, or to access other services. In proposing the toll-free 24-hour hotline number, the Department also recognized this requirement may have a potential impact on the affordability of WIC EBT and may strain State agency management of resources if the State agency needed to expand its operational hours. Therefore, the Department specifically sought comments regarding this proposed requirement.

The Department received 31 comments on this provision of the proposed rule. Ten commenters, all from the advocacy community, were in support of the change, with two of these commenters recommending the provision be broadened to provide hotline assistance to authorized vendors as well. While the Department supports the potential for enhanced business practices and customer service that EBT may provide, we also recognize this could create untenable costs for State agencies and tax their administrative capacity. Additionally, vendors have other means to receive assistance through their commercial equipment and payment service providers or by contacting the State agency vendor coordinator. Therefore, the final rule will not expand the requirement to accommodate vendors.

Twenty-one commenters, primarily State agencies, were opposed to the requirement for a toll-free 24-hour hotline number; of those, fourteen recommended the hotline be a State

agency option rather than a requirement. While many of these commenters were in agreement that EBT offers an opportunity for enhanced customer service to WIC participants, it was noted that requiring this level of customer service had not been determined necessary for the successful operations of WIC EBT in the early smart card implementations as well as in several on-line WIC EBT implementations. These EBT implementers, now statewide, found the 24-hour hotline to be of limited benefit or unnecessary and recommended that the Department eliminates the proposed requirement to establish a toll-free 24-hour hotline number. Furthermore, these commenters noted maintaining a 24-hour, 7 day a week toll-free customer service operation could create undue financial hardships to a State agency and should be a service a State agency may consider as an option if State agency resources allow.

Several commenters noted the demonstrated need for a 24-hour hotline number in the smart card WIC EBT implementations, now statewide, had not materialized nor had advocates for participants or participants themselves expressed the need for this level of service. One State agency commenter indicated there was very little a 24-hour customer service representative could do to assist a WIC participant with a smart card until the WIC clinic was open. Unlike an on-line EBT, current food balances for off-line cards are not available via a customer service number in real time and commenters indicated few instances of difficulty in reporting a card lost or stolen to the WIC clinic have occurred even when operating statewide. Additionally, several State agencies have operated statewide with little demonstrated need for toll-free 24-hour hotline capability through the use of State operated customer service during business hours that transitions to a contractor-supported number for WIC participants or merchants to call outside of business hours. In these State agencies, most cardholder issues are resolved through participant contacts with the local WIC clinic staff.

The Department concurs with the potential issues of affordability, unsubstantiated demand and impact on resource management that the proposed requirement for a 24-hour hotline available to assist participants may have on a State agency. Therefore, the Department is removing the toll-free 24-hour hotline assistance requirement and replacing it with the requirement for a State agency to establish procedures allowing WIC participants to, at a minimum, report cardholder issues, report a lost or stolen card and receive information on the current food balance and benefit expiration date during non-business hours. While a State agency would not be required to provide a toll-free 24-hour hotline supported by customer service representatives and/or an automated Interactive Voice Response (IVR) system, this amended requirement leverages additional opportunities to enhance customer service by providing a means of access for participants to report issues and have fundamental services offered at all times. In addition, per the WIC EBT Technical Information Guide (TIG), participants' purchase receipts must provide food balances and benefit expiration date. The final rule at § 246.12(bb)(3) requires each State agency to establish procedures and systems to enable participants to report cardholder issues during non-business hours as well as receive other services. Procedures may include a toll-free 24-hour hotline or other alternatives to receive services or report card issues in an easily accessible manner. Additionally, the Department encourages State agencies to provide participants with services in the most accessible method as possible, such as mobile balance inquiries in addition to IVR. Other alternatives may become available in the future which would provide opportunities to further improve and enhance WIC customer service. The procedures for meeting the customer service requirements at § 246.12(bb)(3) must be described in the State Plan. A conforming amendment has been made to § 246.4(a)(14)(xx) requiring the description of the State agency's procedures for meeting the customer service requirements.

Three commenters suggested the Department provide guidance on what minimum services would be required in order to maintain compliance with the requirement for toll-free 24-hour hotline services. While this final regulation no longer requires a 24-hour toll-free hotline for WIC cardholders to report issues during non-business hours, the Department has set a minimum level of service participants must be able to receive during non-business hours.

The minimum participant services that must be offered during non-business hours are: (1) Receive information on the current food balance, (2) receive benefit expiration date and (3) report a lost or stolen card and other cardholder issues. The Department expects a State agency to respond to cardholder issues at the time the report is received or as soon as possible. Other customer service features may be included such as obtaining purchase transaction detail, selecting or changing a PIN and finding the locations of WIC authorized vendors. If a State agency seeks to implement alternatives to the minimum service requirements, the agency must submit the plan to FNS for approval.

8. National Universal Product Code (NUPC) Database

Under the proposed rule at § 246.12(cc), the National UPC (NUPC) database would be used by all State agencies providing benefits via WIC EBT. The minimum requirement for usage of the NUPC database could be met by a State agency through the submittal of a copy of the State agency's current authorized product list (APL) for inclusion in the NUPC database. The proposed rule would have also required a State agency to submit a copy of its current APL file prior to the APL becoming effective or making it available to its authorized vendors.

As discussed in the proposed rule, the NUPC database is envisioned to be a repository of information about all food items authorized by each WIC State agency. Information in this repository will be organized in accordance with the National Category Subcategory Table. Additional food product information is included in the database to permit each State agency to determine whether or not to authorize the product for use within the State agency. The additional food product information would include items such as nutrition labeling, bar code symbol, product flat or a photograph of the container and ingredients. The intent of the repository is to facilitate the identification of WIC eligible food items and to provide the associated product information necessary to support EBT operations. For instance, once a State agency has determined a food item is eligible, the product UPC code, food category, subcategory and unit of measure can be easily incorporated into the State agency process for updating its APL file.

The Department received 27 comments on the proposed requirements regarding the use of the NUPC database. Comments were received in five broad areas: (1) Use of UPC terminology; (2) Mandating use of the National Food Category/Subcategory Table by all State agencies; (3) Authority for WIC State agencies to authorize WIC foods; (4) Department approval of APL files prior to distribution to authorized WIC vendors; and (5) The design and functioning of the NUPC clearinghouse. These issues are discussed in more detail below.

Use of UPC Terminology. Several commenters recommended adoption of the terminology used by GS1, which is a nonprofit organization setting industry standards for barcodes used in retail and supply chains. Under the GS1 umbrella, which can be found at *www.gs1.org,* there are Global Trade Identification Numbers (GTINs) which include the UPC necessary during a WIC purchase. The GTINs are contained as UPCs in the APL file a State agency distributes to its authorized vendors. There are several different types of GTINs such as GTIN–8, GTIN–12, GTIN–13 and GTIN–14, which contain UPC numbers of different lengths. There are other GTIN's available for different purposes such as those used on larger cases of product not generally sold at retail. After checking with GS1–US, which is the organization supporting barcode adoption in the United States, GS1 advised the Department that the GTIN–12 and Universal Product Code are used synonymously in the industry; therefore, this rule continues to refer to the UPC as the more commonly recognized terminology used in WIC EBT.

The National UPC database also contains PLUs, which are the standard codes published by the International Federation of Produce Standards (IFPS) for fresh produce such as fruit and vegetables. We wish to correct the record as noted by several commenters that the PLU codes are 5 digits in length even though retail practice generally drops the initial zero for standard PLUs, unless it is genetically modified or organic. Under the IFPS coding structure, a fifth (leading) digit qualifier is allocated to some produce with specific qualities. As noted, the fifth digit qualifiers for global PLU codes are '0' for nonorganic products (referred to as non-qualified PLU codes), although generally this digit is omitted and '9' for organic produce. The '8' leading digit qualifier formerly used for genetically modified produce is no longer used for this purpose. One commenter urged the Department to remain flexible to accommodate future changes in the industry and technology in the supply chain. The Department agrees; during development of the NUPC database and within the WIC technical standards, future changes have been provided for where possible. For example, the longer length UPCs used in Europe and Asia, which are 13 and 14 digits, have not been widely adopted by food manufacturers marketing products in the United States at the time of this writing. To plan for future industry changes, the TIG and associated standards as well the NUPC database currently allow these 13 and 14 digit UPC lengths if a WIC State agency authorizes the product for use or these longer UPCs become prevalent in the United States.

Mandating Use of the National Food Category/Subcategory Table. The proposed rule would not have required each State agency to make use of the National Food Category Subcategory Table, but input was sought on the potential barriers, obstacles and benefits State agencies would incur if conformity to a national standard food classification system would have been required by the Department. The Department also invited reader comment on how conformity could be effectively instituted. While a national standard format would have been required for the APL file, WIC State agencies currently would not be required to use the national category/subcategory table maintained by the Department. The Department believes it is necessary to preserve some flexibility for State agencies to deviate from the national category/subcategory table because of differences in product availability, varying demand for ethnic foods and the need to ensure WIC participants can obtain products such as infant formula in a timely manner.

Several comments were received specific to the National Food Category Subcategory Table. Most voiced concerns about making its use a requirement, particularly for existing EBT State agencies that may have compatibility issues. Two commenters requested flexibility in the use of the NUPC in general, one commenter suggested it be a State agency option and another commenter suggested all EBT stakeholders be included in any process and discussion concerning how conformity could effectively be instituted.

The Department strongly supports and recommends use of the National Food Category Subcategory table by all State agencies as they begin their EBT projects. The Department recognizes, however, how the variability in State agency EBT benefit delivery methods' capability and differences in product selection for approved WIC foods may cause changes to the National Category Subcategory table over time to accommodate individual State agencies. We are also concerned, as many commenters noted, that maintaining the National Food Category Subcategory table consistently for all State agencies places the Department in the middle of food authorization decisions, which is the role WIC State agencies play in building their APL.

Additionally, the current vendor cash register systems, which include most of the major systems available in the United States currently used by WIC vendors, have been able to handle variances in State agency-specific Category Subcategory tables. However, one State agency commented that the food category table and APL files are utilized to control food costs by assigning higher cost food items such as quart and half gallon milk containers to separate food subcategories. In this example, the maximum authorized reimbursement (MAR) amount is computed at the subcategory level and consequently does not affect larger sizes of milk. This State agency also uses its category and subcategory table for cost containment with the cereal, infant fruits and vegetables food categories. The Department recognizes there are high levels of variability in the approaches each State agency has implemented for cost containment. Therefore, while the Department sees value in standardized use of the National Food Category Subcategory Table and we require all new EBT State agencies to adopt it initially, this final rule does not mandate its use. In part, we are persuaded that flexibility is more appropriate than mandating a strict standard because electronic cash registers are able to successfully load APL files with State agency differences in the category, subcategory and unit of measure assigned to each product. The important level of standardization is accomplished by using the APL standard file format and adherence to the EBT Operating Rules and Technical Implementation Guide file formats.

Authority for WIC State Agencies To Authorize WIC Foods. A few commenters expressed support for continuing to allow State agencies to evaluate and authorize WIC foods within their State agency. The proposed rule did not alter current State agency responsibilities for authorizing WIC foods. As previously indicated, the NUPC database is only a repository of information about WIC foods that a WIC State agency may use to identify and select food items for use within the State agency. The determination of which food items are authorized remains a State agency responsibility and does not change now that the NUPC database is available for State agency use.

Submission of APL Files Prior to Distribution. Four commenters, one industry consultant and three State agencies expressed concern that a State agency must submit its APL file to the NUPC database prior to distributing the APL file to their authorized WIC

vendors. The Department wishes to clarify this requirement is only a submission of the APL file whenever it is updated. The APL file can be transmitted to the NUPC database at the same time the file is sent to vendors authorized by the State agency. We recognize the APL file contains critical information needed to accept WIC food items in WIC vendor checkout lanes. This information includes the effective date for new items, changes in the food item descriptions necessary for printing food balances on receipts and in some cases cost containment information (not-to-exceed or maximum authorized price is optional in an APL). It would not be practical or desirable for the Department to interfere with the timely distribution of the APL files.

Having considered all comments and clarifying its intent, the Department has determined the requirement for the State agency to submit a copy of an APL file to the NUPC database will not interfere with State agency operations necessary to support daily EBT activity. In addition, State agencies are currently required to provide a copy of their approved food list to FNS, including any changes to that list. Submitting a copy to FNS's NUPC data base meets this requirement.

Design and Function of a NUPC Clearinghouse. This portion of the proposed rulemaking generated a substantial number of comments on the future potential for enhancing the NUPC database to act as a clearinghouse for State agency APL files in addition to a data repository. Having considered these comments, the Department has decided to not proceed with development of a file clearinghouse capability at this time. The Department believes the proposed language in § 246.12(cc) is broad in nature and allows for flexibility in the use of the NUPC.

Technical Amendment

In a previous WIC final rule, ''Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of Nondiscretionary, Non-Electronic Benefits Transfer-Related Provisions'' (76 FR 59885, September 28, 2011), § 246.4 was amended by re-designating paragraphs (a)(19) through (26) as (a)(20) through (27) and adding a new paragraph (a)(19); however, the amendment could not be incorporated due to inaccurate amendatory instruction. An Editorial Note was published following this section in the CFR that brought the new information to the readers' attention. The correct amendment is included within § 246.4 in this rule.

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules and of promoting flexibility.

This final rule has been determined to be ''Not Significant'' and was not reviewed by the Office of Management and Budget in conformance with Section 3(f) of Executive Order 12866.

Regulatory Impact Analysis

This final rule has been designated as ''Not Significant'' by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Administrator of the Food and Nutrition Service, Audrey Rowe, has determined this rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to State and local agencies and provides increased flexibility in food delivery services for the Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

In WIC, the administrative procedures are as follows: (1) State and local agencies, farmers, farmers' markets and roadside stands—State agency hearing procedures issued pursuant to § 246.18; (2) Applicants and participants—State agency hearing procedures pursuant to § 246.18; (3) Sanctions against State agencies (but not claims for repayment assessed against a State agency)

pursuant to § 246.19—administrative appeal in accordance with § 246.16 and (4) procurement by State or local agencies—administrative appeal to the extent required by 2 CFR 200.318.

Civil Rights Impact Analysis

The Department has reviewed this final rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule's intent and provisions, the Department has determined this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits in the WIC Program. Federal WIC regulations specifically prohibit State agencies that administer the WIC Program and their cooperators, from engaging in actions that discriminate against any individual in any of the protected classes (see § 246.8 for the nondiscrimination policy in the WIC Program). Where State agencies have options and they choose to implement a certain provision, they must implement it in such a way that it complies with the WIC Program regulations set forth at § 246.8.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent quarterly consultation sessions were held on August 20, 2014; November 19, 2014; February 18, 2015; and May 20, 2015. FNS will respond in a timely and meaningful manner to any Tribal government request for consultation concerning the Electronic Benefit Rule for the WIC program. We are unaware of any current Tribal laws that could be in conflict with this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents would not have been required to respond to any collection of information unless it displays a current valid OMB control number. While a conforming amendment has added two additional State Plan requirements in addition to the requirement for an annual EBT status update, the Department considers these to be minimal reporting burden. The annual status report replaces existing updates required for benefit delivery methods using paper food instruments. The two conforming amendments clarify content for EBT delivery replacing the existing paper food instrument or other food delivery content. This final rule contains a small increase to the information collection requirements that are subject to OMB approval.

Section 246.12(y) requires each State agency to have an active EBT project by July 29, 2016. The Advance Planning Document (APD) is used to initiate the EBT planning process. Under the existing collection (0584–0043), it is estimated 15 APDs would be submitted each year. The current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements, related to APD documents, which were approved under OMB control number 0584–0043, will not change as a result of this rule.

FNS has identified a small burden increase associated with providing data to meet the requirement for State agencies to use the National UPC database (NUPC database). Section 246.12(cc) requires each State agency to use the NUPC database, at a minimum, to submit their APL as they begin statewide rollout and as it is updated. The APLs are updated as new products are added or removed by each WIC State agency. FNS estimates the burden under OMB control number 0584–0043 will increase by 40 hours annually based on an estimate of an average of 37 State agencies expected to have operational EBT systems and who will distribute APLs to their WIC-authorized vendors. We estimate approximately 30 seconds to submit an APL. Updates are estimated to occur 2.5 times per week. The resulting annual burden is increased by 40 hours total. FNS will publish a 60-Day **Federal Register** Notice requesting comment on this burden increase concurrent with the publication of this rulemaking.

FNS will submit an Information Collection Request to OMB based on the provisions of this final rule and comments received on the 60-day notice published with this rulemaking. These amended information collection requirements will not become effective until approved by OMB. When OMB concludes its review, FNS will publish a notice in the **Federal Register** of the action.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purpose. State Plan amendments regarding the implementation of the provisions contained in this rule, as is the case with the entire State Plan, may be transmitted electronically by the State agency to the Department. Also, State agencies may provide WIC Program information, as well as their financial reports, to the Department electronically.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, WIC, Women.

Accordingly, for reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.2:

■ a. Amend the definition of ''Cash-value voucher'' by adding a second sentence.

■ b. Add the definitions of ''Electronic Benefit Transfer (EBT)'', ''EBT Capable'', ''Multi-function equipment'', ''Single-function equipment'' and ''Statewide EBT'' in alphabetical order; and

■ c. Revise the definition of ''Participant violation''.

The additions and revision read as follows:

§ 246.2 Definitions.

* * * * *

Cash-value voucher * * * Cash-value voucher is also known as cash-value benefit (CVB) in an EBT environment.

* * * * *

Electronic Benefit Transfer (EBT) means a method that permits electronic access to WIC food benefits using a card or other access device approved by the Secretary.

EBT Capable means the WIC vendor demonstrates their cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

* * * * *

Multi-function equipment means Point-of-Sale equipment obtained by a WIC vendor through commercial suppliers, which is capable of supporting WIC EBT and other payment tender types.

* * * * *

Participant violation means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts, to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

* * * * *

Single-function equipment means Point-of-Sale equipment, such as barcode scanners, card readers, PIN pads and printers, provided to an authorized WIC vendor solely for use with the WIC Program.

* * * * *

Statewide EBT means the State agency has converted all WIC clinics to an EBT delivery method and all authorized vendors are capable of transacting EBT purchases.

* * * * *

■ 3. In § 246.3, revise paragraph (b) to read as follows:

§ 246.3 Administration.

* * * * *

(b) *Delegation to the State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F and USDA implementing regulations 2 CFR part 400 and part 415); governing non-procurement debarment/suspension (2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension and USDA implementing regulations 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E and USDA implementing regulations 2 CFR part 400, part 415, and part 418); and governing the drug-free workplace requirements (2 CFR part 182, Government-wide Requirements for Drug-Free Workplace); FNS guidelines; and, instructions issued under the FNS Directives Management System. The State agency shall provide guidance to local agencies on all aspects of Program operations.

* * * * *

■ 4. In § 246.4:

■ a. Revise paragraph (a)(1).

■ b. Add paragraph (a)(14)(xix).

■ c. Add paragraph (a)(14)(xx).

■ d. Redesignate paragraphs (a)(19) through (a)(28) as paragraphs (a)(20) through (a)(29) and add a new paragraph (a)(19).

The revision and additions read as follows:

§ 246.4 State plan.

(a) * * *

(1) An outline of the State agency's goals and objectives for improving Program operations, to include EBT and/or EBT implementation.

* * * * *

(14) * * *

(xix) A description of how the State agency will replace lost, stolen, or damaged EBT cards and transfer the associated benefits within seven business days.

(xx) A description of the procedures established by the State agency to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on the EBT food balance and receive the current benefit end date. The procedures shall address how the State agency will respond to reports of a lost, stolen, or damaged card within one business day of the date of report.

* * * * *

(19) The State agency's plan to ensure that participants receive required health and nutrition assessments when certified for a period of greater than six months.

* * * * *

■ 5. In § 246.7, add paragraph (j)(10).

§ 246.7 Certification of participants.

* * * * *

(j) * * *

(10) During the certification procedure, every Program applicant, parent or caretaker shall be informed that selling or offering to sell WIC benefits, including cash value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or on-line is a participant violation.

* * * * *

■ 6. Section 246.12 is amended as follows:

■ a. The section heading is revised.

■ b. Paragraph (a) introductory text is amended by removing the word ''benefits'' and adding in its place ''benefit'' and by adding a new sentence at the end of the paragraph.

■ c. Paragraph (b) is amended by removing the word ''three'' and adding in its place ''four''; and by removing the phrase ''or direct distribution.'' at the end of the first sentence and adding in its place ''direct distribution, or EBT.''

■ d. Paragraph (f)(2)(iii) is amended to add in the second sentence ''or in the month of February, 28 or 29 days'' after ''may be used'' and before '', except''.

■ e. Remove paragraph (g)(5) and redesignate paragraphs (g)(6) through (g)(11) as (g)(5) through (g)(10), respectively.

■ f. Add paragraphs (h)(3)(xxvii) through (h)(3)(xxxi).

■ g. Add paragraphs (w) through (cc).

The revision and additions read as follows:

§ 246.12 Food delivery methods.

(a) * * * By October 1, 2020, each State agency shall implement EBT statewide, unless granted an exemption under paragraph (w)(2) of this section.

* * * * *

(h) * * *

(3) * * *

(xxvii) *EBT minimum lane coverage.* Point of Sale (POS) terminals used to support the WIC Program shall be deployed in accordance with the

minimum lane coverage provisions of § 246.12(z)(2). The State agency may remove excess terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in § 246.12(z)(2)(i) and (z)(2)(ii).

(xxviii) *EBT third-party processing costs and fees.* The vendor shall not charge to the State agency any third-party commercial processing costs and fees incurred by the vendor from EBT multi-function equipment. Commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the EBT system of the State shall be borne by the vendor.

(xxix) *EBT interchange fees.* The State agency shall not pay or reimburse the vendor for interchange fees related to WIC EBT transactions.

(xxx) *EBT ongoing maintenance and operational costs.* The State agency shall not pay for ongoing maintenance, processing fees or operational costs for vendor systems and equipment used to support WIC EBT after the State agency has implemented WIC EBT statewide, unless the equipment is used solely for the WIC Program or the State agency determines the vendor using multi-function equipment is necessary for participant access. This provision also applies to authorized farmers and farmers' markets. Costs shared by a WIC State agency will be proportional to the usage for the WIC Program.

(xxxi) *Compliance with EBT operating rules, standards and technical requirements.* The vendor must comply with the Operating rules, standards and technical requirements established by the State agency.

* * * * *

(w) *EBT*–(1) *General.* All State agencies shall implement EBT statewide in accordance with paragraph (a) of this section.

(2) *EBT exemptions.* The Secretary may grant an exemption to the October 1, 2020 statewide implementation requirement. To be eligible for an exemption, a State agency shall demonstrate to the satisfaction of the Secretary one or more of the following:

(i) There are unusual technological barriers to implementation;

(ii) Operational costs are not affordable within the nutrition services and administration grant of the State agency; or

(iii) It is in the best interest of the program to grant the exemption.

(3) *Implementation date.* If the Secretary grants a State agency an exemption, such exemption will remain in effect until: The State agency no longer meets the conditions on which the exemption was based; the Secretary revokes the exemption or for three years from the date the exemption was granted, whichever occurs first.

(x) *Electronic benefit requirements*—(1) *General.* State agencies using EBT shall issue an electronic benefit that complies with the requirements of paragraph (x)(2) of this section.

(2) *Electronic benefits.* Each electronic benefit must contain the following information:

(i) *Authorized supplemental foods.* The supplemental foods authorized by food category, subcategory and benefit quantity, to include the cash-value benefit;

(ii) *First date of use.* The first date of use on which the electronic benefit may be used to obtain authorized supplemental foods;

(iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days, or in the month of February 28 or 29 days, from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance when it may be the end of the month or cycle for which the electronic benefit is valid; and

(iv) *Benefit issuance identifier.* A unique and sequential number. This number enables the identification of each benefit change (addition, subtraction or update) made to the participant account.

(3) *Vendor identification.* The State agency shall ensure each EBT purchase submitted for electronic payment is matched to an authorized vendor, farmer, or farmers' market prior to authorizing payment. Each vendor operated by a single business entity must be identified separately.

(y) *EBT management and reporting.* (1) The State agency shall follow the Department Advance Planning Document (APD) requirements and submit Planning and Implementation APD's and appropriate updates, for Department approval for planning, development and implementation of initial and subsequent EBT systems.

(2) If a State agency plans to incorporate additional programs in the EBT system of the State, the State agency shall consult with State agency officials responsible for administering the programs prior to submitting the Planning APD (PAPD) document and include the outcome of those discussions in the PAPD submission to the Department for approval.

(3) Each State agency shall have an active EBT project by May 31, 2016. Active EBT project is defined as a formal process of planning, implementation, or statewide implementation of WIC EBT.

(4) Annually as part of the State plan, the State agency shall submit EBT project status reports. At a minimum, the annual status report shall contain:

(i) Until operating EBT statewide, an outline of the EBT implementation goals and objectives as part of the goals and objectives in § 246.4(a)(1), to demonstrate the State agency's progress toward statewide EBT implementation;

(ii) If operating EBT statewide, any information on future EBT changes and procurement updates affecting present operations; and

(iii) Such other information the Secretary may require.

(5) The State agency shall be responsible for EBT coordination and management.

(z) *EBT food delivery methods: Vendor requirements*–(1) *General.* State agencies using EBT for delivering benefits shall comply with the vendor requirements in paragraphs (g) through (l) of this section. In addition, State agencies shall comply with requirements that are detailed throughout this paragraph (z).

(2) *Minimum lane coverage.* The Point-of-Sale (POS) terminals, whether single-function equipment or multi-function equipment, shall be deployed as follows:

(i) *Superstores and supermarkets.* There will be one POS terminal for every $11,000 in monthly WIC redemption up to a total of four POS terminals, or the number of lanes in the location, whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption threshold increments as follows: one terminal for $0 to $11,000; two terminals for $11,001 to $22,000; three terminals for $22,001 to $33,000; and four terminals for $33,001 and above. A State agency may utilize an alternative installation formula with Department approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(ii) *All other vendors.* One POS terminal for every $8,000 in monthly redemption up to a total of four POS terminals, or the number of lanes in the location; whichever is less. At a minimum, terminals shall be installed for monthly WIC redemption thresholds as follows: one terminal for $0 to $8,000; two terminals for $8,001 to $16,000; three terminals for $16,001 to $24,000; and four terminals for $24,001 and above. A State agency may utilize an alternative installation formula with

Department approval. The monthly redemption levels used for the installation formula shall be the average redemptions based on a period of up to 12 months of prior redemption;

(iii) The State agency shall determine the number of appropriate POS terminals for authorized farmers and farmers' markets;

(iv) For newly authorized WIC vendors deemed necessary for participant access by the State agency, the vendor shall be provided one POS terminal unless the State agency determines other factors in this location warrant additional terminals;

(v) Any authorized vendor who has been equipped with a POS terminal by the State agency may submit evidence additional terminals are necessary after the initial POS terminals are installed;

(vi) The State agency may provide authorized vendors with additional POS terminals above the minimum number required by this paragraph in order to permit WIC participants to obtain a shopping list or benefit balance, as long as the number of terminals provided does not exceed the number of lanes in the vendor location;

(vii) The State agency may remove excess POS terminals if actual redemption activity warrants a reduction consistent with the redemption levels outlined in paragraphs (z)(2)(i) through (ii) of this section.

(3) *Payment to vendors, farmers and farmers' markets.* The State agency shall ensure that vendors, farmers and farmers' markets are paid promptly. Payment must be made in accordance with the established Operating Rules and technical requirements after the vendor, farmer or farmers' market has submitted a valid electronic claim for payment.

(aa) *Imposition of costs on vendors, farmers and farmers' markets.* (1) *Cost prohibition.* Except as otherwise provided in this section, a State agency shall not impose the costs of any single-function equipment or system required for EBT on any authorized vendor, farmers or farmers' markets in order to transact EBT.

(2) *Cost sharing.* If WIC Program equipment is multi-function equipment, the State agency shall develop cost sharing criteria with authorized WIC vendors, farmers and farmers' markets for costs associated with such equipment in accordance with Federal cost principles. Any cost sharing agreements shall be developed between a State agency and its vendors, farmers, or farmers' markets depending on the type, scope and capabilities of shared equipment. The State agency must furnish its allocation and/or cost sharing methodology to the Department as part of the Advanced Planning Document for review and approval before incurring costs.

(3) *Fees*—(i) *Third-party processor costs and fees.* The State agency shall not pay or reimburse vendors, farmers or farmers' markets for third-party processing costs and fees for vendors, farmers, or farmers' markets that elect to accept EBT using multi-function equipment. The State agency or its agent shall not charge any fees to authorized vendors for use of single-function equipment.

(ii) *Interchange fees.* The State agency shall not pay or reimburse the vendor, farmer or farmers' markets for interchange fees on WIC EBT transactions.

(4) *Statewide operations.* After completion of statewide EBT implementation, the State agency shall not:

(i) Pay ongoing maintenance, processing fees or operational costs for any vendor, farmer or farmers' market utilizing multi-function systems and equipment, unless the State agency determines that the vendor is necessary for participant access. The State agency shall continue to pay ongoing maintenance, processing fees and operational costs of single-function equipment;

(ii) Authorize a vendor, farmer, or farmers' market that cannot successfully demonstrate EBT capability in accordance with State agency requirements, unless the State agency determines the vendor is necessary for participant access.

(bb) *EBT Technical standards and requirements.* (1) Each State agency, contractor and authorized vendor participating in the program shall follow and demonstrate compliance with:

(i) Operating rules, standards and technical requirements as established by the Secretary; and

(ii) Other industry standards identified by the Secretary.

(2) The State agency shall establish policy permitting the replacement of EBT cards and the transfer of participant benefit balances within no more than seven business days following notice by the participant or proxy to the State agency.

(3) The State agency shall establish procedures to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on the EBT food balance and receive the current benefit end date. The State agency shall respond to any report of a lost, stolen, or damaged card within one business day of the date of report. If a State agency seeks to implement alternatives to the minimum service requirements, the agency must submit the plan to FNS for approval.

(cc) *National universal product codes (UPC) database.* The national UPC database is to be used by all State agencies using EBT to deliver WIC food benefits.

Dated: February 19, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–04261 Filed 2–29–16; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AO–13–0163; AMS–FV–12–0069; FV13–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Order Amending Marketing Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 905 (order), which regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. The amendments were proposed by the Citrus Administrative Committee (Committee), which locally administers the order, and is comprised of growers and handlers. These amendments: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of the financial reserve fund; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee. All of the proposals were favored by Florida citrus growers in a mail referendum, held September 14 through October 5, 2015. Of the 200 votes cast, 96 percent or more of the vote by number and 99 percent or more by volume approved all nine amendments. The amendments are intended to

improve the operation and functioning of the marketing order program.

DATES: This rule is effective March 2, 2016.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557–4783, Fax: (435) 259–1502, or Michelle Sharrow, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Melissa.Schmaedick@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov.or Melissa.Schmaedick@usda.gov*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the March 28, 2013, issue of the **Federal Register** (78 FR 18899); a Recommended Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** (80 FR 11335); and, a Secretary's Decision and Referendum Order issued on July 14, 2015, and published in the **Federal Register** on July 21, 2015 (80 FR 43040).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Orders 12866, 13563, and 13175.

Preliminary Statement

The final rule was formulated on the record of a public hearing held on April 24, 2013, in Winter Haven, Florida. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on March 28, 2013 (78 FR 18899). The notice of hearing contained nine proposals submitted by the Committee.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS issued a Recommended Decision and Opportunity to File Written Exceptions thereto by April 2, 2015. None were filed.

A Secretary's Decision and Referendum Order was issued on July 14, 2015, directing that a referendum be conducted during the period of September 14 through October 5, 2015, among eligible Florida citrus growers to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of those growers voting, or by voters representing at least two-thirds of the volume of citrus represented by voters voting in the referendum. Voters voting in the referendum favored all of the proposed amendments.

The amendments favored by voters and included in this final order will: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of financial reserve funds; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee.

USDA also made such changes as were necessary to the order so that all of the order's provisions conform to the effectuated amendments. A conforming change was made to the title of 7 CFR part 905. The title is revised to ''ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA'' to reflect the addition of pummelos as a regulated fruit and the inclusion of tangelos as a regulated hybrid variety.

The amended marketing agreement was subsequently mailed to all citrus handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of citrus handled by all handlers during the representative period of August 1, 2014, through July 31, 2015.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

According to the 2007 U.S. Census of Agriculture, the number of citrus growers in Florida was 6,061. According to the National Agriculture Statistic Service (NASS) Citrus Fruit Report, published September 19, 2012, the total number of acres used in citrus production in Florida was 495,100 for the 2011/12 season. Based on the number of citrus growers from the U.S. Census of Agriculture and the total acres used for citrus production from NASS, the average citrus farm size is 81.7 acres. NASS also reported the total value of production for Florida citrus at $1,804,484,000. Taking the total value of production for Florida citrus and dividing it by the total number of acres used for citrus production provides a return per acre of $3,644.69. A small grower as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than $750,000 annually. Multiplying the return per acre of $3,644.69 by the average citrus farm size of 81.7 acres, yields an average return of $297,720.51. Therefore, a majority of Florida citrus producers are considered small entities under SBA's standards.

According to the industry, there were 44 handlers for the 2011/12 season, down 25 percent from the 2002/03 season. A small agricultural service firm as defined by the SBA is one that grosses less than $7,000,000 annually. Based on information submitted by industry, 21 handlers would be considered small entities under SBA's standards. A majority of citrus handlers are considered large entities under SBA's standards.

The production area regulated under the order covers the portion of the state of Florida which is bound by the Suwannee River, the Georgia Border, the Atlantic Ocean, and the Gulf of Mexico. Acreage devoted to citrus production in the regulated area has declined in recent years.

According to data presented at the hearing, bearing acreage for oranges reached a high of 605,000 acres during the 2000/01 crop year. Since then, bearing acreage for oranges has decreased 28 percent. For grapefruit, bearing acreage reached a high of 107,800 acres during the 2000/01 crop year. Since the 2000/01 crop year,

bearing acreage for grapefruit has decreased 58 percent. For tangelos, bearing acreage reached a high for the 2000/01 crop year of 10,800 acres for Florida. Since the 2000/01 crop year, bearing acreage for tangelos has decreased 62 percent. For tangerines and mandarins, bearing acreage reached a high for the 2000/01 crop year of 25,500 acres. Since the 2000/01 crop year, bearing acreage for tangerines and mandarins has decreased 53 percent.

According to data presented at the hearing, the total utilized production for oranges reached a high during the 2003/04 crop year of 242 million boxes. Since the 2000/01 crop year, total utilized production for oranges has decreased 34 percent. For grapefruit, the total utilized production reached a high during the 2001/02 crop year of 46.7 million boxes. Since the 2000/01 crop year, total utilized production for grapefruit has decreased 59 percent. For tangelos, the total utilized production reached a high during the 2002/03 crop year of 2.4 million boxes. Since the 2000/01 crop year, total utilized production for tangelos has decreased 45 percent. For tangerines and mandarins, the total utilized production reached a high during the 2001/02 crop year of 6.6 million boxes. Since the 2000/01 crop year, total utilized production for tangerines and mandarins has decreased 23 percent.

Material Issues

This action amends the order to: Authorize regulation of new varieties and hybrids of citrus fruit; authorize the regulation of intrastate shipments of fruit; revise the process for redistricting the production area; change the term of office and tenure requirements for Committee members; authorize mail balloting procedures for Committee membership nominations; increase the capacity of financial reserve funds; authorize pack and container requirements for domestic shipments and authorize different regulations for different markets; eliminate the use of separate acceptance statements in the nomination process; and require handlers to register with the Committee.

These amendments will streamline program operations, but are not expected to result in a significant change in industry production, handling or distribution activities.

During the hearing held on April 24, 2013, interested persons were invited to present evidence on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have any burdensome effects on small agricultural producers or firms.

In discussing the impacts of the amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing Committee duties and responsibilities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of the order for the benefit of the Florida citrus industry.

Paperwork Reduction Act

Current information collection requirements for Part 905 are approved by the Office of Management and Budget (OMB) under OMB Number 0581–0189—''Generic OMB Fruit Crops.'' In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the termination of the Letter of Acceptance has been submitted to the Office of Management and Budget (OMB) for approval. The Letter of Acceptance has no time or cost burden associated with it due to the fact that handlers simply sign the form upon accepting nomination to the Committee. As a result, the current number of hours associated with OMB No. 0581–0189, Generic Fruit Crops, would remain the same: 7,786.71 hours.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Civil Justice Reform

The amendments to the order contained herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments do not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Order Amending the Order Regulating the Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 905, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of oranges, grapefruit, tangerines, and pummelos grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) The marketing order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of oranges, grapefruit, tangerines, and pummelos grown in the production area; and

(5) All handling of oranges, grapefruit, tangerines, and pummelos grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the amendments for the new crop year, which begins August 1, 2016.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping citrus covered by the order as hereby amended) who, during the period August 1, 2014, through July 31, 2015, handled 50 percent or more of the volume of such citrus covered by said order, as hereby amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, was favored or approved by at least two-thirds of the growers who participated in a referendum on the question of approval and who, during the period of August 1, 2014, through July 31, 2015 (which has been deemed to be a representative period), have been engaged within the production area in the production of such citrus, such growers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of citrus in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of oranges, grapefruit, tangerines, and pummelos grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Secretary's Decision issued on February 23, 2015, and published in the March 3, 2015, issue of the **Federal Register** (80 CFR 11335) will be and are the terms and provisions of this order amending the order and are set forth in full below.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangerines.

For the reasons set out in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise the heading for part 905 to read as set forth above.

■ 3. Revise § 905.4 to read as follows:

§ 905.4 Fruit.

Fruit means any or all varieties of the following types of citrus fruits grown in the production area:

(a) Citrus sinensis, Osbeck, commonly called ''oranges'';

(b) Citrus paradisi, MacFadyen, commonly called ''grapefruit'';

(c) Citrus reticulata, commonly called ''tangerines'' or ''mandarin'';

(d) Citrus maxima Merr (L.); Osbeck, commonly called ''pummelo''; and,

(e) ''Citrus hybrids'' that are hybrids between or among one or more of the four fruits in paragraphs (a) through (d) of this section and the following: Trifoliate orange (Poncirus trifoliata), sour orange (C. aurantium), lemon (C. limon), lime (C. aurantifolia), citron (C. medica), kumquat (Fortunella species), tangelo (C. reticulata x C. paradisi or C. grandis), tangor (C. reticulata x C. sinensis), and varieties of these species. In addition, citrus hybrids include: Tangelo (C. reticulata x C. paradisi or C. grandis), tangor (C. reticulata x C. sinensis), Temple oranges, and varieties thereof.

■ 4. Revise § 905.5 to read as follows:

§ 905.5 Variety.

Variety or *varieties* means any one or more of the following classifications or groupings of fruit:

(a) *Oranges.* (1) Early and Midseason oranges;

(2) Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type;

(3) Navel oranges.

(b) *Grapefruit.* (1) Red Grapefruit, to include all shades of color;

(2) White Grapefruit.

(c) *Tangerines and mandarins.* (1) Dancy and similar tangerines;

(2) Robinson tangerines;

(3) Honey tangerines;

(4) Fall-Glo tangerines;

(5) US Early Pride tangerines;

(6) Sunburst tangerines;

(7) W-Murcott tangerines;

(8) Tangors.

(d) *Pummelos.* (1) Hirado Buntan and other pink seeded pummelos;

(2) [Reserved].

(e) *Citrus hybrids*—(1) *Tangelos.* (i) Orlando tangelo;

(ii) Minneola tangelo.

(2) Temple oranges.

(f) *Other varieties of citrus fruits specified in § 905.4, including hybrids, as recommended and approved by the Secretary. Provided,* That in order to add any hybrid variety of citrus fruit to be regulated under this provision, such variety must exhibit similar characteristics and be subject to cultural practices common to existing regulated varieties.

■ 5. Revise § 905.7 to read as follows:

§ 905.7 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier transporting fruit for another person) who, as owner, agent, or otherwise, handles fruit in fresh form, or causes fruit to be handled. Each handler shall be registered with the Committee pursuant to rules recommended by the Committee and approved by the Secretary.

■ 6. Revise § 905.9 to read as follows:

§ 905.9 Handle or ship.

Handle or *ship* means to sell, transport, deliver, pack, prepare for market, grade, or in any other way to place fruit in the current of commerce within the production area or between any point in the production area and any point outside thereof.

■ 7. Revise § 905.14 to read as follows:

§ 905.14 Redistricting.

(a) The Committee may, with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: *Provided,* That the membership shall consist of at least eight but not more than nine grower members, and any such change shall be based, insofar as practicable, upon the respective averages for the immediately preceding three fiscal periods of:

(1) The number of bearing trees in each district;

(2) The volume of fresh fruit produced in each district;

(3) The total number of acres of citrus in each district; and

(4) Other relevant factors.

(b) Each redistricting or reapportionment shall be announced on or prior to March 1 preceding the effective fiscal period.

■ 8. Revise § 905.20 to read as follows:

§ 905.20 Term of office.

The term of office of members and alternate members shall begin on the first day of August of even-numbered years and continue for two years and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to two terms. The terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in §§ 905.22 and 905.23.

■ 9. In § 905.22, revise paragraphs (a)(1) and (b)(1) and add paragraph (c) to read as follows:

§ 905.22 Nominations.

(a) *Grower members.* (1) The Committee shall give public notice of a meeting of producers in each district to be held not later than June 10th of even-numbered years, for the purpose of making nominations for grower members and alternate grower members. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of June.

* * * * *

(b) *Shipper members.* (1) The Committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than June 10th of even-numbered years, for the purpose of making nominations for shipper members and their alternates. The Committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and the balloting thereat. The chairperson of each such meeting shall publicly announce at the meeting the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of June.

* * * * *

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, nomination and election of members and alternate members to the Committee may be conducted by mail, electronic mail, or other means according to rules and regulations recommended by the Committee and approved by the Secretary.

■ 10. Revise § 905.28 to read as follows:

§ 905.28 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the Committee shall, prior to selection by the Secretary, qualify by filing a written qualification and acceptance statement indicating such person's qualifications and willingness to serve in the position for which nominated.

■ 11. In § 905.42, revise the first sentence of paragraph (a) to read as follows:

§ 905.42 Handler's accounts.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two fiscal periods' expenses. * * *

* * * * *

■ 12. In § 905.52, revise paragraphs (a)(4) and (5) and add paragraph (a)(6) to read as follows:

§ 905.52 Issuance of regulations.

(a) * * *

(4) Establish, prescribe, and fix the size, capacity, weight, dimensions, marking (including labels and stamps), or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit.

(5) Provide requirements that may be different for the handling of fruit within the production area, the handling of fruit for export, or for the handling of fruit between the production area and any point outside thereof within the United States.

(6) Any regulations or requirements pertaining to intrastate shipments shall not be implemented unless Florida statutes and regulations regulating such shipments are not in effect.

* * * * *

Dated: February 25, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–04470 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1779 and 1780

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Rural Housing Service

7 CFR Parts 3570 and 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4280

RIN 0570–AA87, 0570–AA92, 0572–AB57, 0572–AB59, 0575–AC53, 0575–AC58, 0575–AC75, 0575–AC78

Underlying Programs Cross-References to the Strategic Economic and Community Development; Technical Amendments

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: Rural Development (RD) is correcting an oversight of omitting cross-reference to the Strategic Economic and Community Development priority in the underlying programs when it published the rule for the priority.

DATES: This rule is effective March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Farah Ahmad, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3254, 1400 Independence Avenue SW., Washington, DC 20250–0783, Telephone: 202–245–1169. Email: *Farah.Ahmad@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill) provides the Secretary of Agriculture the authority to give priority to projects that support strategic economic development or community development plans. Section 6025 enables the Secretary to reserve up to 10 percent of program funds from certain Rural Development programs, as identified in the section.

On May 20, 2015 (80 FR 28807), the Agency implemented this priority through the establishment of a new regulation, which is found in 7 CFR part 1980, subpart K of the Code of Federal Regulations. The new regulation applies to the following specific programs, which are referred to as the ''underlying programs,'' within Rural Development:

- Community Facility Loans
- Fire and Rescue and Other Small Community Facilities Projects
- Community Facilities Grant Program
- Community Programs Guaranteed Loans
- Water and Waste Disposal Programs Guaranteed Loans
- Water and Waste Loans and Grants
- Business and Industry Guaranteed Loanmaking and Servicing
- Rural Business Development Grants

When the Agency published the new regulation, we overlooked inserting cross-references to the new regulation in the regulations for the underlying programs. This action corrects that oversight. Specifically, the Agency is adding to each of the underlying programs' regulations language that alerts potential applicants to the new strategic and economic development regulation, which is found in 7 CFR part 1980, subpart K of chapter XVIII of the Code of Federal Regulations.

List of Subjects

7 CFR Part 1779

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1780

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1942

Business and industry, Community facilities, Fire prevention, Grant programs—business, Grant programs—housing and community development, Grant programs—Indians, Indians, Loan programs—agriculture, Loan programs—housing and community development, Loan programs—Indians, Loan programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 3570

Administrative practice and procedure, Fair housing, Grant programs—housing and community development, Housing, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3575

Loan programs—agriculture.

7 CFR Part 4279

Loan programs—business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Energy efficiency improvements, Feasibility studies, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas.

For the reasons discussed above, chapters XVII, XVIII, XXXV, and XLII of title 7, of the Code of Federal Regulations are amended as follows:

Chapter XVII—Rural Utilities Service, Department of Agriculture

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

■ 1. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 2. Add § 1779.51 to read as follows:

§ 1779.51 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 3. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

■ 4. Add § 1780.34 to read as follows:

§ 1780.34 Strategic economic and community development.

Applicants with projects that support the implementation of strategic

economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

PART 1942—ASSOCIATIONS

■ 5. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loan

■ 6. Add § 1942.10 to read as follows:

§ 1942.10 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

■ 7. Add § 1942.110 to read as follows:

§ 1942.110 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

Chapter XXXV—Rural Housing Service, Department of Agriculture

PART 3570—COMMUNITY PROGRAMS

■ 8. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 9. Add § 3570.71 to read as follows:

§ 3570.71 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

PART 3575—GENERAL

■ 10. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

■ 11. Add § 3575.51 to read as follows:

§ 3575.51 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture

PART 4279—GUARANTEED LOANMAKING

■ 12. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart B—Business and Industry Loans

■ 13. Add § 4279.162 to read as follows:

§ 4279.162 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

PART 4280—LOANS AND GRANTS

■ 14. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 904c and 7 U.S.C. 1932(c).

Subpart E—Rural Business Development Grants

■ 15. Add § 4280.428 to read as follows:

§ 4280.428 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

Dated: February 19, 2016.

Lisa Mensah,

Under Secretary, Rural Development.

Dated: February 19, 2016.

Michael Scuse,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2016–04309 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3144; Directorate Identifier 2014–NM–110–AD; Amendment 39–18403; AD 2016–04–09]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. This AD was prompted by a report of significant fuel leakage at the middle position of the left outboard slat. This AD would require modifying the assembly of the slat extension mechanical stop. We are issuing this AD to prevent failure of the assembly of the slat extension mechanical stop, which if not corrected, could lead to a significant fuel leak and result in an uncontained fire.

DATES: This AD becomes effective April 5, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 5, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-3144;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3144.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on August 21, 2015 (80 FR 50810). The NPRM was prompted by a report of significant fuel leakage at the middle position of the left outboard slat. The NPRM proposed to require modifying the assembly of the slat extension mechanical stop. We are issuing this AD to prevent failure of the assembly of the slat extension mechanical stop, which if not corrected, could lead to a significant fuel leak and result in an uncontained fire.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0115, dated May 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The MCAI states:

> After landing, an airplane experienced a significant fuel leakage at the middle position of the left outboard slat. Investigations showed that the fuel spillage originated in a structural cap, which had been punctured by a broken locking pin of the slat extension mechanical stop.
>
> A design review revealed that the locking pin could become loose due to an incorrect installation combined with a non-fault-tolerant design.
>
> This condition, if not corrected, may lead to a significant fuel leak, possibly resulting in an uncontained fire.
>
> To address this potential unsafe condition, Dassault Aviation developed a modification of the slat extension mechanical stop assembly (Mod M3678 for [Model] F2000EX aeroplanes and Mod M5870 for [Model] F900EX aeroplanes) with the purpose to increase its robustness with regards to possible mishandling on production or during maintenance. Dassault Aviation also published Service Bulletin (SB) F2000EX–344 and SB F900EX–450, for embodiment in service of that modification.
>
> For the reasons described above, this [EASA AD] requires modification of the slat extension mechanical stop assembly.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-3144-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (80 FR 50810, August 21, 2015) and the FAA's response to that comment.

Request To Refer to the Latest Service Information

Dassault Aviation requested that we refer to the latest service information: Erratum Service Bulletin F900EX–450, dated July 16, 2014; and Erratum Service Bulletin F2000EX–344, dated July 16, 2014. Dassault Aviation stated that it issued changes to Dassault Service Bulletin F900EX–450, dated March 10, 2014; and Dassault Service Bulletin F2000EX–344, dated March 10, 2014 (which we referred to as the appropriate sources of service information for accomplishing the actions specified in the proposed AD (80 FR 50810, August 21, 2015)).

We agree with the commenter. Dassault Erratum Service Bulletin F900EX–450, dated July 16, 2014; and Erratum Service Bulletin F2000EX–344, dated July 16, 2014; include among other minor changes, additional illustrations. We have revised paragraph (g) of this AD to refer to Dassault Erratum Service Bulletin F900EX–450, dated July 16, 2014; and Dassault Erratum Service Bulletin F2000EX–344, dated July 16, 2014. We have also added a new paragraph (h) to this AD to provide credit for the actions specified in paragraph (g) of this AD, if those actions are done before the effective date of this AD using Dassault Service Bulletin F900EX–450, dated March 10, 2014; or Dassault Service Bulletin F2000EX–344, dated March 10, 2014; as applicable. We have redesignated the subsequent paragraphs accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 50810, August 21, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 50810, August 21, 2015).

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Erratum Service Bulletin F900EX–450, dated July 16, 2014; and Erratum Service Bulletin F2000EX–344, dated July 16, 2014. This service information describes procedures for modifying the assembly of the slat extension mechanical stop. 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.

Costs of Compliance

We estimate that this AD affects 67 airplanes of U.S. registry.

We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,510 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $280,730, or $4,190 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-3144*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–04–09 Dassault Aviation: Amendment 39–18403. Docket No. FAA–2015–3144; Directorate Identifier 2014–NM–110–AD.

(a) Effective Date

This AD becomes effective April 5, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Dassault Aviation Model FALCON 900EX airplanes, all serial numbers on which Dassault Aviation Modification M5281 has been embodied, except those on which Dassault Aviation Modification M5870 has been embodied in production.

(2) Dassault Aviation Model FALCON 2000EX airplanes, all serial numbers on which Dassault Aviation Modification M2846 has been embodied, except those on which Dassault Aviation Modification M3678 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a report of significant fuel leakage at the middle position of the left outboard slat. We are issuing this AD to prevent failure of the assembly of the slat extension mechanical stop, which if not corrected, could lead to a significant fuel leak and result in an uncontained fire.

(f) Compliance

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

(g) Modification

Within 9 months or 440 flight hours, whichever occurs first after the effective date of this AD: Modify the assembly of the slat extension mechanical stop, in accordance with Accomplishment Instructions of Dassault Erratum Service Bulletin F900EX–450, dated July 16, 2014; or Dassault Erratum Service Bulletin F2000EX–344, dated July 16, 2014; as applicable.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (h)(1) and (h)(2) of this AD, which are not incorporated by reference in this AD.

(1) Dassault Service Bulletin F900EX–450, dated March 10, 2014; and

(2) Dassault Service Bulletin F2000EX–344, dated March 20, 2014.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0115, dated May 13, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3144.

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

(k) Material Incorporated by Reference

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

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

(i) Dassault Erratum Service Bulletin F900EX–450, dated July 16, 2014. (All pages of this revised service bulletin are marked ''Initial issuance'' and dated July 16, 2014.)

(ii) Dassault Erratum Service Bulletin F2000EX–344, dated July 16, 2014. (All pages of this revised service bulletin are marked ''Initial issuance'' and dated July 16, 2014.)

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

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For

information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 15, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–03694 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0755; Directorate Identifier 2014–NM–080–AD; Amendment 39–18414; AD 2016–04–20]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Model 757 airplanes, Model 767 airplanes, and Model 777 airplanes. This AD results from fuel system reviews conducted by the manufacturer. This AD requires an inspection to determine if certain motor-operated valve (MOV) actuators for the fuel valves are installed, and replacement of any affected actuators. Previous ADs addressed this Special Federal Aviation Regulation No. 88 (SFAR 88) issue for the majority of the airplanes delivered with these actuators. Since those ADs did not cover all of the airplanes, and for some airplanes delivered with improved actuators, there was no restriction on installation of replacement actuators with the unsafe condition, this additional rulemaking action is required. As with the related ADs, we are issuing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the fuel valve actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective April 5, 2016.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0755; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Model 757 airplanes, Model 767 airplanes, and Model 777 airplanes. The NPRM published in the **Federal Register** on November 7, 2014 (79 FR 66343) (''the NPRM''). The NPRM results from fuel system reviews conducted by the manufacturer. The NPRM proposed to require an inspection to determine if certain actuators for the fuel valves are installed, and replacement of any affected actuators. Previous ADs addressed this SFAR 88 (66 FR 23086, May 7, 2001) issue for the majority of the airplanes delivered with these actuators. Since those ADs did not cover all of the airplanes, and for some airplanes delivered with improved actuators, there was no restriction on installation of replacement actuators with the unsafe condition, this additional rulemaking action is required. As with the related ADs, we are issuing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the fuel valve actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Requests To Revise the Proposed Applicability

Boeing, All Nippon Airways (ANA), American Airlines (AAL), Southwest Airlines (SWA), and United Airlines (UAL), requested that we delete Model 737–600, –700, 700C, –800, –900, and –900ER series airplanes from the applicability of the NPRM. The commenters stated that AD 2008–06–03, Amendment 39–15415 (73 FR 13081, March 12, 2008) (''AD 2008–06–03''), mandated replacement of all fuel system MOV actuators having Part Number (P/N) MA20A1001–1 (S343T003–39) on Model 737 airplanes, and that the compliance time for AD 2008–06–03 ended April 16, 2013. Boeing stated that first production delivery of the SFAR88 compliant actuator having P/N MA20A2027 (S343T003–56) occurred on line number 1877, and that the illustrated parts catalog (IPC) for that airplane and subsequent airplanes prohibited installation of MOV actuators having P/N MA20A1001–1 (S343T003–39).

We partially agree with the commenters' requests. We agree there is little risk that MOV actuators having P/N MA20A1001–1 (S343T003–39) are currently installed on Model 737–600, –700, 700C, –800, –900, and –900ER series airplanes for the reasons provided by the commenter. However, we want to ensure that MOV actuators having P/N MA20A1001–1 (S343T003–39) are not installed on these airplanes in the future. Therefore, we have removed Model 737 airplanes from the actions required by paragraph (g) of this AD but not from the applicability of the AD. We have retained Model 737 airplanes in paragraph (i) of this AD, which states that no person may install an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane. Paragraph (i) of this AD ensures that installation of MOV actuators having P/

N MA20A1001–1 (S343T003–39) is prohibited.

Boeing, AAL, and UAL requested that we delete Model 757–200, –200PF, –200CB, and –300 series airplanes from the applicability of the NPRM. The commenters stated that the previously referenced AD 2008–06–03 is applicable to Model 757 airplanes. Boeing stated that the last Model 757 airplane was delivered prior to development of the new SFAR 88 compliant MOV actuator and that AD 2008–06–03 will ensure that MOV actuators having P/N MA20A1001–1 (S343T003–39) are not installed on any Model 757 airplanes.

We partially agree with the commenters' requests. We agree that the requirements of AD 2008–06–03 are intended to prevent Model 757–200, –200PF, –200CB, and –300 series airplanes from having an MOV actuator having P/N MA20A1001–1 installed and have determined there is little risk that MOV actuators having P/N MA20A1001–1 (S343T003–39) are currently installed on Model 757–200, –200PF, –200CB, and –300 series airplanes. However, we want to ensure that MOV actuators having P/N MA20A1001–1 (S343T003–39) are not installed on these airplanes in the future. Therefore, we have removed the Model 757 airplanes from the actions required by paragraph (g) of this AD. We have retained Model 757 airplanes in paragraph (i) of this AD, which states that no person may install an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane.

Boeing, AAL, ANA, and UAL requested that we delete Model 767 airplanes from the applicability of the NPRM. The commenters stated that AD 2009–22–13, Amendment 39–16066 (74 FR 55755, October 29, 2009) (''AD 2009–22–13''), mandated replacement of all fuel system MOV actuators having P/N MA20A1001–1 (S343T003–39) on Model 767 airplanes, and that the compliance time for AD 2009–22–13 ended December 3, 2014. Boeing stated that first production delivery of the SFAR 88 compliant MOV actuator having P/N MA30A1001–1 (S343T003–56) occurred on line number 941; and that the IPC for that airplane and subsequent airplanes prohibited installation of the MOV actuator having P/N MA20A1001–1 (S343T003–39).

We partially agree with the commenters' requests. We agree with deleting most Boeing Model 767–200, –300, –300F, and –400ER series airplanes from the actions required by paragraph (g) of this AD but not from the applicability of the AD. The requirements of AD 2009–22–13 are intended to prevent all but Model 767–300 series airplanes having line numbers 939 and 940 from having an MOV actuator having P/N MA20A1001–1 (S343T003–39) installed. We have determined that except for Model 767–300 series airplanes having line numbers 939 and 940, there is little risk that MOV actuators having P/N MA20A1001–1 (S343T003–39) are currently installed on Model 767–200, –300, –300F, and –400ER series airplanes. Therefore, we have revised paragraph (g) of this AD to specify that the actions apply to Model 767–300 series airplanes with line numbers 939 and 940. To ensure that MOV actuators having P/N MA20A1001–1 (S343T003–39) are not installed in the future on Model 767 airplanes, we have retained Model 767 airplanes in paragraph (i) of this AD, which states that no person may install an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane.

Boeing, AAL, ANA, Delta Airlines (DAL), and UAL requested that we revise the Model 777 applicability. The commenters stated that AD 2013–05–03, Amendment 39–17375 (78 FR 17290, March 21, 2013) (''AD 2013–05–03''), mandated replacement of all fuel system MOV actuators having P/N MA20A1001–1 on Model 777 airplanes and prohibits installation of an MOV actuator having P/N MA20A1001–1 on any Model 777 airplane. Boeing stated that the NPRM would be redundant for airplanes covered by AD 2013–05–03, and that all other airplanes that are not covered by AD 2013–05–03 have no production authority to install an MOV actuator having P/N MA20A1001–1.

We partially agree with the commenters' requests. We agree with deleting Model 777 airplanes with Aircraft Information Management System (AIMS) version 2 covered by AD 2013–05–03 from the actions required by paragraph (g) of this AD but not from the applicability of this AD. The requirements of AD 2013–05–03 will prevent an MOV actuator having P/N MA20A1001–1 from being installed on these airplanes. We disagree with deleting Model 777 airplanes with AIMS version 1 from the applicability of this AD because AD 2013–05–03 allows airplanes with AIMS version 1 to retain MOV actuators having P/N MA20A1001–1 at certain locations. We have revised paragraph (g) of this AD to exclude Model 777 airplanes having line numbers 454 through 551 inclusive, which have AIMS version 2 installed.

Boeing, AAL, and DAL requested that we exclude certain Model 777 airplanes from the actions required by paragraph (g) of the proposed AD. The commenters stated that it appears that the intent of the NPRM might be to address the IPC that allows an MOV actuator having P/N MA20A1001–1 (S343T003–39) to be installed on a limited number of Model 777 airplanes. Boeing stated that it believes that, as the IPC has been corrected to not allow installation of an MOV actuator having P/N MA20A1001–1 (S343T003–39), and that Boeing Service Bulletin 777–28A0034, Revision 3, dated September 25, 2015, provides inspections of the MOV actuator for the 11 airplanes affected by the IPC, the actions taken are sufficient to ensure removal of the MOV actuator having P/N MA20A1001–1 (S343T003–39) from the affected airplanes.

We partially agree with the commenter's request. We have revised paragraph (g) of this AD to exclude Model 777 airplane having line number 563 and subsequent from the actions required by paragraph (g) of this AD. As stated previously, we have already revised paragraph (g) to exclude Model 777 airplanes having line numbers 454 through 551 inclusive. However, the 11 Model 777 airplanes affected by the IPC error are retained in paragraph (g) of this AD in order to require an inspection and replacement of MOV actuators having P/N MA20A1001–1 (S343T003–39). To ensure that MOV actuators having P/N MA20A1001–1 (S343T003–39) are not installed on Model 777 airplanes in the future, all Model 777 airplanes are included in paragraph (i) of this AD, which states that no person may install an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane. Paragraph (i) of this AD ensures that installation of MOV actuators having P/N MA20A1001–1 (S343T003–39) is prohibited.

Requests To Clarify Justification for the NPRM (79 FR 66343, November 7, 2014)

Boeing, AAL, and DAL requested that we clarify the reasons for issuing the NPRM as it appears to be requiring actions mandated in previously issued ADs.

We agree to clarify the reasons for this rulemaking action. We have revised the **SUMMARY** and Discussion section of this final rule to state that previous ADs address this SFAR 88 issue for the majority of the airplanes delivered with these actuators. Since those ADs did not cover all of the airplanes, and since some airplanes have no restrictions to prevent airplanes delivered with improved actuators from receiving replacement actuators with the unsafe condition, this additional rulemaking action is required. As with the ADs described previously, we are issuing this AD to prevent electrical energy

from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

Request To Revise Unsafe Condition Statement

Boeing requested that we revise the unsafe condition statement in the NPRM to better define the unsafe condition. Boeing stated that the unsafe condition is the possibility for operators to install the non-SFAR88 compliant [and in this case unsafe] MOV actuator design, due to a possible IPC error, on in-service airplanes that have been delivered with the SFAR88 compliant MOV actuator design. Boeing stated that AD 2008–06–03 required replacing all MOV actuators having P/N MA20A1001–1 (S343T003–39) for all Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, and Model 757 airplanes, but the actions in the NPRM implied otherwise.

We partially agree with the commenter. We agree that an IPC error might have allowed non-SFAR88 compliant MOV actuators to be installed. However, the IPC error only affected a limited number of Model 777 airplanes and not Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, and Model 757 and 767 airplanes. As stated previously, this AD was revised and, therefore, does not require an inspection, and replacement if necessary, for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Model 757 airplanes, and Model 767 airplanes, except for Model 767–300 series airplanes having line numbers 939 and 940.

We disagree with changing the unsafe condition statement since that statement reflects the consequent results of installing the non-compliant MOV actuator. We have not changed this AD in this regard.

Requests To Revise Compliance Time for the MOV Actuator Replacement

Boeing and UAL requested that we revise the compliance time in paragraph (h) of the proposed AD for the MOV actuator replacement from within 60 months after the effective date of this AD to before further flight. The commenters stated that this revision would then match the language used in AD 2008–06–03.

As we stated previously, the airplanes identified in AD 2008–06–03 have been removed from paragraph (g) of this AD and therefore those airplanes are not affected by paragraph (h) of this AD. The compliance of ''within 60 months after the effective date of this AD'' does correspond with the compliance times specified in AD 2009–22–13 and AD 2013–05–03 and the associated Boeing service information. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the MOV actuators. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the MOV actuator having P/N MA20A1001–1 (S343T003–39) can be replaced in a timely manner within the fleet, while still maintaining an adequate level of safety. We have confirmed with Boeing that the safety analysis supports the compliance of ''within 60 months after the effective date of this AD.'' Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time. We have not changed this AD in this regard.

Request To Remove Parts Installation Prohibition

Boeing and UAL stated that AD 2008–06–03, AD 2009–22–13, and AD 2013–05–03 already prohibit installation of the unsafe MOV actuator.

From this statement, we infer that the commenters would like us to remove paragraph (i) of the proposed AD, which proposed to prohibit installation of an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane as of the effective date of the AD. We do not agree to remove paragraph (i) of this AD. While in some instances there are prohibitions against installation of these MOV actuators, there are certain airplanes on which operators are still allowed to install these actuators. We have determined that paragraph (i) of this AD is necessary to ensure that no MOV actuators having P/N MA20A1001–1 (S343T003–39) are installed on any Model 737–600, –700, –700C, –800, –900, and –900ER series airplane, Model 757 airplane, Model 767 airplane, or Model 777 airplane. We have not changed this AD in this regard.

Requests To Revise ''Affected AD'' Paragraph

Boeing and ANA requested that we add AD 2008–06–03 to paragraph (b), ''Affected ADs'' of the proposed AD. ANA also requested that we add AD 2009–22–13 and AD 2013–05–03 to paragraph (b), ''Affected ADs'' of the proposed AD. Boeing stated that AD 2008–06–03 replaced all MOV actuators having P/N MA20A1001–1 (S343T003–39), and that the NPRM implied otherwise.

We agree that the referenced ADs are related, but we disagree with the request to change paragraph (b) of this AD. The referenced ADs are similar to this AD but are not directly impacted by this AD. The term ''affected ADs'' refers to ADs that are directly affected by this AD, for example, ADs that are superseded, revised, or terminated by this AD. Also, as stated previously, airplanes affected by AD 2008–06–03 have been removed from the inspection required by paragraph (g) of this AD, and therefore, are not included in the replacement of MOV actuators having P/N MA20A1001–1 (S343T003–39) required by paragraph (h) of this AD. We have not changed this AD in this regard.

Requests To Use Alternative Inspections

Boeing and DAL requested that we make accomplishment of the inspection requirements in paragraphs (g) and (h) of this AD using the service information identified in earlier ADs, such as AD 2008–06–03, acceptable for addressing the unsafe condition identified in this AD. Boeing stated that approving those previous inspection requirements would prevent repetition of inspections already performed.

As we stated previously, the airplanes identified in AD 2008–06–03 and certain earlier ADs have been removed from paragraph (g) of this AD; therefore, those airplanes are also not affected by paragraph (h) of this AD. Thus, there is no need to identify the service information from earlier ADs. We have not changed this AD in this regard.

Request To Retain Maintenance Records Review

ANA requested that we retain the maintenance records review provided in paragraph (g) of the proposed AD to determine if an unsafe MOV actuator is installed.

We acknowledge the commenter's request. Paragraph (g) of this AD already permits a review of the airplane maintenance records to determine if the unsafe MOV actuator is installed. We have retained that action in this AD. Therefore, no additional change to this AD is necessary in this regard.

Requests for Alternative Method of Compliance (AMOC)

ANA and DAL requested that we specify the previous related ADs as an AMOC for the actions, since those ADs do the same actions for some of the airplanes identified in the NPRM.

We partially agree with the commenters' requests. We agree with the concept of providing credit for

previous actions because most operators have already taken the actions required by the previously described related ADs. We disagree with providing an AMOC for previous actions because airplanes changed according to the requirements of the previously described related ADs have been removed from paragraph (g) of this AD. No further change to this AD has been made in this regard.

Request for Part Clarification

SWA requested that we clarify the name of the actuator. SWA stated that the NPRM preamble describes replacement of ''spar-mounted'' MOV actuators, but paragraphs (g), (h), and (i) of the proposed AD does not state ''spar-mounted.''

We agree to clarify the name of the actuator. Most components have several ways to refer to them. In order to provide consistency, we have removed the term ''spar-mounted'' in the preamble of this final rule.

Request To Provide MOV Actuator Locations

DAL requested that we include or give reference to graphics or figures, which would clearly illustrate the locations of all affected MOV actuators.

We agree with the commenter's request to specify the locations of all affected MOV actuators, but we do not agree to reference graphics or figures. We have added new paragraphs (g)(1) and (g)(2) in this AD to specify the MOV actuator locations.

Request To Revise Part Location Wording

DAL requested that we revise the last sentence of paragraph (g) of the proposed AD to reflect the fact that there are multiple positions for the installed MOV actuators.

We agree with the commenter's request. We have revised the introductory text of paragraph (g) of this AD to state in part, ''A review of airplane maintenance records is acceptable in lieu of this inspection, if the part number of the actuator at each location can be conclusively determined from that review.''

Request To Add IPC Terminating Action

DAL requested that we revise the NPRM to permit an IPC restriction as terminating action for the actions required by paragraph (g) of the propose AD. DAL stated that it believes this IPC restriction would provide an equivalent level of safety to the maintenance records review specified in paragraph (g) of the proposed AD.

We do not agree with the commenter's request. The IPC would indicate that P/N MA20A1001–1 (S343T003–39) is not eligible for installation, but it would not require actions for any airplanes with a non-compliant actuator that is currently installed. In addition, the IPC is not FAA-approved and is not used to control the configuration of the airplane. Therefore, the inspection required by paragraph (g) of this AD must be done to identify non-compliant actuators and paragraph (h) of this AD must be done to replace non-compliant actuators. We have not changed this AD in this regard.

Request To Provide Part Replacement Procedure Reference

DAL requested that we include a statement in paragraph (h) of the proposed AD to specify that MOV actuator replacement following the applicable aircraft maintenance manual (AMM) procedures is an acceptable procedure. DAL stated that operators will have difficulty complying with the part replacement requirements due to the lack of specific details relating to the part replacement method.

We agree with the commenter's request. We have added new Note 1 to paragraph (h) of this AD, which states that guidance on replacing the affected MOV actuator can be found in the Boeing 767 Aircraft Maintenance Manual or the Boeing 777 Aircraft Maintenance Manual, as applicable.

Request To Provide Part Number References

DAL requested that we include a statement in paragraph (h) of the proposed AD, or an additional new paragraph, which would identify all known MOV actuator part numbers that are acceptable replacement parts. DAL stated that operators will have difficulty complying with the part replacement requirements due to the lack of specific details relating to the MOV actuator part numbers.

We do not agree with the commenter's request. The unsafe condition is present in only one part number actuator. There are several part numbers that are appropriate for replacement and new ones may become available. As such, we only intend to prohibit the installation of parts that are known to have unsafe conditions associated with them. This approach should make it easier for an operator to comply with the requirements of this AD without the need for AMOCs to install future acceptable part numbers and still prevent unsafe parts from being installed. We have not changed this AD in this regard.

Request To Revise Proposed Cost Estimates

DAL requested that we revise the proposed costs estimates. DAL stated that inspection of all the MOV positions (described in Boeing Service Bulletin 777–28A0034), can take between 3.25 and 3.75 work-hours, excluding access and restoration; and that the on-condition replacement of a single MOV actuator can be as high as 51 work-hours. DAL also stated that the cost of a replacement MOV actuator is $6,862.

We agree with the commenter's request to revise the cost estimates provided in this final rule. We have revised the on-condition part cost to $6,862. Replacing an actuator can take as little as 30 minutes, or up to 51 hours if a fuel tank needs to be emptied. Therefore, we have revised the on-condition labor cost to up to 51 work-hours to reflect the possible higher cost.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Costs of Compliance

We estimate that this AD affects 2,140 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine part number (Up to 482 airplanes)	1 work-hour × $85 per hour = $85.	$0	$85	Up to $40,970.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Actuator replacement	Up to 51 work-hours × $85 per hour = up to $4,335 per actuator.	$6,862 per actuator	Up to $11,197 per actuator.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–04–20 The Boeing Company: Amendment 39–18414; Docket No. FAA–2014–0755; Directorate Identifier 2014–NM–080–AD.

(a) Effective Date

This AD is effective April 5, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

(2) Model 757–200, –200PF, –200CB, and –300 series airplanes.

(3) Model 767–200, –300, –300F, and –400ER series airplanes.

(4) Model 777–200, –200LR, –300, –300ER, and –777F series airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the fuel valve actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Inspection To Determine Part Number (P/N)

For Model 767–300 series airplanes having line numbers 939 and 940; and Model 777–200, –200LR, –300, –300ER, and –777F series airplanes, except airplanes having line numbers 454 through 551 inclusive, and 563 and subsequent: Within 60 months after the effective date of this AD, do an inspection to determine whether any motor-operated shutoff valve (MOV) actuators having P/N MA20A1001–1 (S343T003–39) for the fuel tanks or fuel feed system are installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the actuator at each location can be conclusively determined from that review.

(1) For Model 767 airplanes, there are several affected actuator locations: the fuel shutoff valves, the fuel crossfeed valves, the defueling valves, the jettison nozzle valves, the jettison transfer valves, the auxiliary power unit (APU) fuel shutoff valve and the APU fuel isolation valve.

(2) For Model 777 airplanes, there are several affected actuator locations: the fuel shutoff valves, the fuel crossfeed valves, the defueling valves, the jettison nozzle valves, the jettison isolation valves, the APU fuel shutoff valve, the APU fuel isolation valve, the auxiliary tank isolation valve, the auxiliary tank refuel valve, the auxiliary tank fuel transfer valve, the auxiliary tank vent valve, and the auxiliary tank Number 2 refuel isolation valve.

(h) Replacement

If, during the inspection required by paragraph (g) of this AD, any MOV actuator

having P/N MA20A1001–1 (S343T003–39) for the fuel tanks is installed: Within 60 months after the effective date of this AD, replace the affected MOV actuator with a serviceable, FAA-approved MOV actuator other than one having P/N MA20A1001–1 (S343T003–39).

Note 1 to paragraph (h) of this AD: Guidance on replacing the affected MOV actuator may be found in the Boeing 767 Aircraft Maintenance Manual or the Boeing 777 Aircraft Maintenance Manual, as applicable.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an MOV actuator having P/N MA20A1001–1 (S343T003–39) on any airplane.

(j) 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 (k) 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.

(k) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@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.

(l) Material Incorporated by Reference

None.

Issued in Renton, Washington, on February 16, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04033 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2455; Directorate Identifier 2014–NM–180–AD; Amendment 39–18415; AD 2016–04–21]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2008–26–07 for all The Boeing Company Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. AD 2008–26–07 required repetitive inspections of the lower skin and stringers at certain stations, and corrective actions if necessary. This new AD continues to require the actions specified in AD 2008–26–07 and also requires an eddy current high frequency (ETHF) inspection for cracks of the fastener open holes common to the lower skins, stringers, and splice fittings at a certain station; installation of external doublers and fasteners and repetitive eddy current low frequency (ETLF) inspections around the fasteners for any crack; and corrective actions if necessary. This AD was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of the engineering data that support the established structural maintenance program. We are issuing this AD to detect and correct cracks in the lower skins, stringers, and fastener holes of the splice fittings, which could result in the loss of structural integrity of the airplane.

DATES: This AD is effective April 5, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 5, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 28, 2009 (73 FR 78946, December 24, 2008).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; 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–2015–2455.

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–2015–2455; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chandra Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone: 562–627–5239; fax: 562–627–5210; email: *Chandraduth.Ramdoss@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), (''AD 2008–26–07''). AD 2008–26–07 applied to all McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. The NPRM published in the **Federal Register** on July 2, 2015 (80 FR 38038) (''the NPRM''). The NPRM was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of

the engineering data that support the established structural maintenance program. The NPRM proposed to continue to require the actions specified in AD 2008–26–07 and also to require an ETHF inspection for cracks of the fastener open holes common to the lower skins, stringers, and splice fittings at a certain station; installation of external doublers and fasteners and repetitive ETLF inspections around the fasteners for any crack; and corrective actions if necessary. We are issuing this AD to detect and correct cracks in the lower skins, stringers, and fastener holes of the splice fittings, which could result in the loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Clarify the Actions in Paragraph (j)(1) of the Proposed AD

Boeing requested that we clarify paragraph (j)(1) of the proposed AD. Boeing stated that paragraph (j)(1) of the proposed AD does not specify what to inspect or how to inspect. Boeing recommended that a description similar to that of paragraph (j)(2) of the proposed AD be included in paragraph (j)(1) of the proposed AD.

We agree with the request to clarify the inspection requirements. Paragraph (j)(l) of the AD is for airplanes that have previous structural repairs at the lower skins, stringers, and splice. For those airplanes, because the details of the configuration are not known, a specific description of the area to be inspected cannot be given. Paragraph (j)(2) of this AD provides specific inspections for certain airplanes because those inspections are described in Boeing Service Bulletin DC8–57–104, dated August 18, 2014. However, that service information does not provide specific inspection areas for airplanes identified in paragraph (j)(1) of this AD. Therefore, for the inspection and applicable corrective actions, paragraph (j)(1) of this AD requires that the operator use a method approved in the accordance with the procedures specified in paragraph (m) of this AD. We have revised paragraph (j)(1) of this AD to specify the general inspection area, which includes the lower skins, stringers, and splice fittings.

Clarification of Actions Specified in Paragraph (k) of This AD.

Paragraph (k) of the NPRM referred to Boeing Service Bulletin DC8–57–104, dated August 18, 2014, for the compliance times for the actions required by that paragraph but did not include a reference for the installation and inspections required by paragraph (k) of this AD. We have revised paragraph (k) of this AD to refer to Boeing Service Bulletin DC8–57–104, dated August 18, 2014, as the appropriate source of service information for accomplishing the installation and inspections.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin DC8–57–104, dated August 18, 2014. The service information describes procedures for certain airplanes for an ETHF inspection for cracks of the fastener open holes common to the lower skins, stringers, and splice fittings at a certain station; installation of external doublers and fasteners and repetitive ETLF inspections around the fasteners for any crack; and corrective actions. 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.

Costs of Compliance

We estimate that this AD affects 12 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection [retained actions from AD 2008-26-07, Amendment 39–15773 (73 FR 78946, December 24, 2008)].	6 work-hours × $85 per hour = $510 per inspection cycle.	$0	$510	$6,120 per inspection cycle.
ETHF Inspection [new action]	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680	$8,160 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of External Doubler	5 work-hour × $85 per hour = $425.	$20,000	$20,425.
Repetitive ETLF inspection	8 work-hour × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle.

For all actions and repairs on Groups 1–3, Configuration 1 Airplanes, we have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), and adding the following new AD:

2016–04–21 The Boeing Company: Amendment 39–18415; Docket No. FAA–2015–2455; Directorate Identifier 2014–NM–180–AD.

(a) Effective Date

This AD is effective April 5, 2016.

(b) Affected ADs

This AD replaces AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008).

(c) Applicability

This AD applies to all The Boeing Company Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by certain mandated programs intended to support the airplane reaching its limit of validity of the engineering data that support the established structural maintenance program. We are issuing this AD to detect and correct cracks in the lower skins, stringers, and fastener holes of the splice fittings, which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections With No Changes

This paragraph restates the requirements of paragraph (f) of AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), with no changes. At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, except as provided by paragraph (h) of this AD, do the applicable inspections for fatigue cracking of the lower skin and stringers at stations Xw = 408 and Xw = −408, and do all applicable corrective actions, by accomplishing all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008. Do all corrective actions before further flight. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, until paragraph (j) of this AD is done.

(h) Retained Exception for Compliance Time With No Changes

This paragraph restates the exception specified in paragraph (g) of AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), with no changes. Where Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, specifies a compliance time ''after the date on this service bulletin,'' this AD requires compliance within the specified compliance time after January 28, 2009 (the effective date of AD 2008–26–07).

(i) Retained Exception for Corrective Action With No Changes

This paragraph restates the exception specified in paragraph (h) of AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), with no changes. If any cracking is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(j) New Inspections and Corrective Action

(1) For Groups 1–3, Configuration 1 airplanes identified in Boeing Service Bulletin DC8–57–104, dated August 18, 2014: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin DC8–57–104, dated August 18, 2014, except as required in paragraph (l) of this AD, do an inspection for any cracking of the lower skins, stringers, and splice fittings, and do all applicable corrective actions, using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) For Groups 1–3, Configuration 2 airplanes identified in Boeing Service Bulletin DC8–57–104, dated August 18, 2014: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin DC8–57–104, dated August 18, 2014, except as required in paragraph (l) of this AD, do an eddy current high frequency (ETHF) inspection for any cracking of the fastener open holes common to the lower skins, stringers, and splice fittings at station Xw = 408 and Xw = −408 from stringer 51 to stringer 65, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–57–104, dated August 18, 2014. If any cracking is found, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(k) New Doubler and Fastener Installation and Eddy Current Low Frequency (ETLF) Inspection of the External Doubler and Corrective Action

If no crack is found during the inspection required by paragraph (j)(2) of this AD: At the applicable times specified in paragraph 1.E.,

''Compliance,'' of Boeing Service Bulletin DC8–57–104, dated August 18, 2014, install external doublers and fasteners, and do an external doubler ETLF inspection around the fasteners for any cracking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–57–104, dated August 18, 2014. Repeat the external ETLF inspection at the applicable intervals specified in 1.E., ''Compliance,'' of Boeing Service Bulletin DC8–57–104, dated August 18, 2014. If any cracking is found during any ETLF inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(l) Exception to the Compliance Time

Where Boeing Service Bulletin DC8–57–104, dated August 18, 2014, 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.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (n) of this AD. Information may be emailed to *9-ANM-LAACO-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, Los Angeles 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) AMOCs approved for AD 2008–26–07, Amendment 39–15773 (73 FR 78946, December 24, 2008), are approved as AMOCs for the corresponding provisions of this AD.

(5) Except as required by paragraphs (j) and (k) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (m)(5)(ii) of this AD 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.

(n) Related Information

For more information about this AD, contact Chandra Ramdoss, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone: 562–627–5239; fax: 562–627–5210; email: *Chandraduth.Ramdos@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 April 5, 2016.

(i) Boeing Service Bulletin DC8–57–104, dated August 18, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on January 28, 2009 (73 FR 78946, December 24, 2008).

(i) Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008.

(ii) Reserved.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

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

(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 Renton, Washington, on February 15, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04035 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1270; Directorate Identifier 2014–NM–222–AD; Amendment 39–18412; AD 2016–04–18]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes. This AD was prompted by reports of significant fuselage skin damage at certain parts of the dorsal fairing, due to wear from the dorsal fairing. This AD requires repetitive detailed inspections for wear and cracks of the fuselage skin under the dorsal fairing, and related investigative and corrective actions if necessary. This AD also requires repetitive post-repair external surface high frequency eddy current inspections of the blended areas of the skin and detailed inspections of the unrepaired areas, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct fuselage skin damage of the dorsal fairing area, which could result in skin cracking and consequent depressurization of the airplane.

DATES: This AD is effective April 5, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 5, 2016.

ADDRESSES: For service information identified in this final rule, 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–2015–1270.

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–2015–1270; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–100, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes. The NPRM published in the **Federal Register** on May 5, 2015 (80 FR 25627). The NPRM was prompted by reports of significant fuselage skin damage at certain parts of the dorsal fairing, due to wear from the dorsal fairing. The NPRM proposed to require repetitive detailed inspections for wear and cracks of the fuselage skin under the dorsal fairing, and related investigative and corrective actions if necessary. The NPRM also proposed to require repetitive post-repair external surface high frequency eddy current inspections of the blended areas of the skin and detailed inspections of the unrepaired areas, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct fuselage skin damage of the dorsal fairing area, which could result in skin cracking and consequent depressurization of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 25627, May 5, 2015) and the FAA's response to each comment.

Request To Clarify Exclusion of Certain Post-Modification Inspections

Boeing asked that we clarify paragraph (i) of the proposed AD (80 FR 25627, May 5, 2015). Boeing stated that paragraph (i) of the proposed AD correctly states that post-modification inspections would not be required by the AD, but the proposed AD does not clearly state that those inspections are still required per operating rules, which has caused confusion for operators in the past. Boeing suggested that we revise the proposed AD to state that post-modification inspections are already required by 14 CFR 121.1109(c)(2) and 14 CFR 129.109(b)(2).

We agree to clarify paragraph (i) of this AD. We have revised paragraph (i) of this AD to clarify that the post-modification inspections are airworthiness limitations that are required by maintenance and operational rules; therefore, these inspections are not required by this AD.

Request To Require Post-Modification Inspections Currently Excluded

United Airlines (UAL) asked that the post-modification inspections excluded from the requirements of paragraph (i) of the proposed AD (80 FR 25627, May 5, 2015) instead be required. UAL stated that there is a conflict between the proposed AD and tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. UAL noted that the post-modification inspections specified in tables 3, 6, and 7 are not required in paragraph (i) of the proposed AD; however, compliance tables 1 and 2 of paragraph 1.E. of the service information instruct operators to accomplish those post-modification inspections using tables 3, 6, and 7 of paragraph 1.E.

UAL added that Note 1 to paragraph (i) of the proposed AD (80 FR 25627, May 5, 2015) specifies that the post-modification inspections may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). UAL pointed out that sections 121.1109(c)(2) and 129.109(b)(2) require operators to inspect damage-tolerant reinforcing repairs to fatigue critical structures; however, rub strips protect the skin from contact with the dorsal fairing and are not considered a reinforcing repair.

We disagree with the commenter's request to require post-modification inspections; however we acknowledge there is a conflict. Paragraph (i) of this AD states that tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specify post-modification airworthiness limitation inspections in compliance to 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). These two regulations require damage-tolerance-based inspections to be added as airworthiness limitations in order to prevent the adverse effects of repairs, alterations, and modifications. The rub strips are considered a modification to fatigue-critical structure and meet the intent of section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations. Where compliance tables 1 and 2 of paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, instruct operators to accomplish post-modification inspections using tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of the service information, those post-modification inspections are not required by this AD. We have added a reference to paragraph (i) of this AD in paragraphs (g) and (h) of this AD to clarify tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of the service information are not required by paragraphs (g) and (h) of this AD.

Request To Delete Certain Actions

UAL asked that we delete Options 1 and 2 of table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. UAL stated that Option 1 is for post-modification of blend-out repairs without a rub strip installed, and added that table 3 is for post-modification inspections for airplanes with a rub strip previously installed. UAL added that the Option 2 blend-out repair is redundant information if the Option 1 action is deleted.

We do not agree with the commenter's request. Paragraph (i) of this AD specifies that table 3, as well as tables 6 and 7, are not required by this AD. Therefore, no further change to the AD is necessary in this regard.

Request To Add Certain Requirements

UAL asked that instructions be added to Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, to apply Teflon coating on top of the rub strips. UAL stated that this will further enhance protection and will reduce wear and cracking of the rub strip due to contact with the dorsal fairing.

We do not agree with the commenter's request. Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014

(and the associated repairs and modifications), was coordinated with the FAA before it was issued. This coordination included a damage-tolerance analysis supporting the inspection thresholds and intervals specified in the service information. Operators preferring to use a method other than that specified in the referenced service information may request approval for an alternative method of compliance (AMOC) and provide supporting data, which, if approved, may be used instead of the procedures specified in the service information. We have made no change to the AD in this regard.

Request To Add Exception to the Proposed AD (80 FR 25627, May 5, 2015)

United Parcel Service (UPS) asked that we add another exception to paragraph (j) of the proposed AD (80 FR 25627, May 5, 2015) to clarify that Section 3.B., Part 6, sub-step 2, of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, is not required. UPS stated that paragraph (g) of the proposed AD requires operators to perform applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. UPS added that there is an inconsistency in those Accomplishment Instructions. UPS noted that tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specify performing the actions in Parts 6 and 7, and those sections include instructions labeled ''Required for Compliance'' (RC). UPS stated that performing the same action in both Parts 6 and 7 results in a duplication of work. UPS added that it submitted a service request to Boeing and asked for clarification on this duplication of work. UPS stated that Boeing agreed that corrective actions could result in duplication and that it would evaluate the steps in the Work Instructions and clarify them as necessary.

We do not agree with the commenter's request. Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specifies that if, during the accomplishment of Part 6, obtaining the gap identified in Condition 6 is not possible, the operator must perform the actions associated with Condition 7, including trimming and re-shimming the dorsal fin fairing to obtain that gap by following the instructions in Part 7 of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. After this is done, the operator must re-measure, as specified in Part 7, to make sure the gap dimensions are correct. Following accomplishment of Part 7, the operator must complete the actions in Part 6 at the repetitive intervals specified in table 2 or table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014 (table 2 is required by paragraph (g) of this AD; table 3 specifies post-modification airworthiness limitation inspections in compliance to 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2)). In light of these facts, we have determined that there is no duplication of work. We have not changed the AD in this regard.

Change To the Proposed AD (80 FR 25627, May 5, 2015)

Paragraph (g) of this AD refers to initial and repetitive inspections of the unrepaired structure. Paragraph (h) of this AD refers to doing the inspections specified at the applicable times in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. These tables include compliance times for both the repaired and unrepaired areas. The proposed AD (80 FR 25627, May 5, 2015) specified to require the inspections in both paragraphs (g) and (h) of this AD, since there is no terminating action identified in paragraph (h) of this AD. We have determined that further clarification of these inspection requirements is necessary. Therefore, we have added a sentence to paragraph (h) of this AD clarifying that the inspections required by paragraph (h) of this AD do not terminate the inspections required by paragraph (g) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 25627, May 5, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 25627, May 5, 2015).

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. This service information describes procedures for repetitive inspections of the fuselage skin under the dorsal fairing, the blended areas of the skin, and unrepaired areas, and related investigative and corrective actions, if necessary. 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.

Explanation of ''RC'' 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 Required for Compliance (RC) 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 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.

Costs of Compliance

We estimate that this AD affects 93 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 15 work-hours × $85 per hour = $1,275.	$0	Up to $1,275 per inspection cycle	Up to $118,575 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–04–18 The Boeing Company: Amendment 39–18412 ; Docket No. FAA–2015–1270; Directorate Identifier 2014–NM–222–AD.

(a) Effective Date

This AD is effective April 5, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of significant fuselage skin damage at the dorsal fairing forward of station (STA) 2280 due to wear from the dorsal fairing. We are issuing this AD to detect and correct fuselage skin damage of the dorsal fairing area, which could result in skin cracking and consequent depressurization of the airplane.

(f) Compliance

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

(g) Inspections and Repair

At the applicable time specified in tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (j)(1) of this AD, do a detailed inspection of the fuselage skin under the dorsal fairing for wear or cracks, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (i) of this AD and except as required by paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. Repeat the applicable inspections of the fuselage skin thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

(h) Post-Repair Inspections

At the applicable time specified in tables 4 and 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (j)(1) of this AD, do an external surface high frequency eddy current inspection of the blended areas of the skin and a detailed inspection of the unrepaired areas, and do all applicable related investigative and corrective actions, in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, except as provided by paragraph (i) of this AD and except as required by paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. Repeat the applicable inspections of the blended areas of the skin thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014. Accomplishing the inspections required by this paragraph does not terminate the inspections required by paragraph (g) of this AD.

(i) Post-Modification Inspections

Tables 3, 6, and 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specify post-modification airworthiness limitation inspections in compliance to 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, 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.

(2) Although Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014, specifies to contact Boeing for repair data, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration 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. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (j)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(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.

(l) Related Information

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

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–53A2876, dated October 22, 2014.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on February 15, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–03884 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 701

[Docket No. 150825780–6125–02]

RIN 0694–AG38

Export Control Reform: Conforming Change to Defense Sales Offset Reporting Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule requires reporting of offsets agreements in connection with sales of items controlled on the United States Munitions List (USML) and items controlled in ''600 series'' Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) except for certain submersible and semi-submersible cargo transport vessels and related items that are not on the control lists of any of the multilateral export control regimes of which the United States is a member. Since the early 1990s, BIS has required reporting of offsets agreements in connection with sales of items controlled on the USML. Those reporting requirements will continue, unchanged by this rule. Beginning on October 15, 2013, some items have been removed from the USML and been added to 600 series ECCNs. These items were subject to offsets reporting requirements prior to being added to 600 series ECCNs. Some other items have been moved from non-600 series ECCNs to 600 series ECCNs as part of the Administration's Export Control Reform Initiative. This rule requires reporting of offsets agreements in connection with sales of items controlled in 600 series ECCNs regardless of whether the item was added to a 600 series ECCN simultaneously with its removal from the USML or was subject to the EAR prior to its inclusion in a 600 series ECCN, except for certain submersible and semi-submersible cargo transport vessels and related items that are not on the control lists of any of the multilateral export control regimes of which the United States is a member. The changes made by this rule were the subject of a proposed rule for which BIS received no comments. This final rule adopts the text of the proposed rule without change.

DATES: *Effective:* March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Strategic Analysis Division, Office of Strategic Industries and Economic Security, 202–482–3755, or *ronald.demarines@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Part 701 of Title 15, Code of Federal Regulations—Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms (herein the Offsets Reporting Regulations) requires that U.S. firms report certain offset agreements to BIS annually. BIS uses the information so reported to develop a ''detailed annual report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States'' (herein ''the offset report to Congress''), that is submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, as required by Section 723 of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4568(a)(1)). An offset for purposes of the Offsets Reporting Regulations is compensation required by the purchaser as a condition of the purchase in government-to-government or commercial sales of defense articles or services. This compensation can take a variety of forms, including: Co-

production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, and purchases. An agreement to provide offsets with a value exceeding $5,000,000 must be reported to BIS. Performance of an existing offset commitment for which offset credit of $250,000 or more has been claimed must also be reported to BIS.

The Defense Production Act describes the items for which the offset report to Congress must be submitted as ''weapon system[s] or defense-related item[s].'' (*See* section 723 of the DPA) (50 U.S.C. 4568(c)(1)). The Offsets Reporting Regulations currently require reporting of offsets in connection with ''defense articles and/or defense services'' as defined by the Arms Export Control Act and the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR). *See* 15 CFR 701.2(a). The ITAR includes the USML (22 CFR part 121), which describes the defense articles that it regulates. Beginning on October 15, 2013, as part of the Administration's Export Control Reform Initiative, a series of rules removed a number of defense articles from the USML and added them to the CCL (15 CFR part 774, Supp. No. 1). BIS created a new series of ECCNs in the EAR, identified as the ''600 series'' because the third character in the ECCN is the numeral ''6,'' for those defense articles. The 600 series items formerly controlled on the USML were subject to offsets reporting requirements before being added to the 600 series.

Simultaneously with adding former USML defense articles to the 600 series ECCNs, BIS added to those ECCNs some items that are of a military nature but that were already subject to the EAR. BIS took this step to provide consistent treatment for all military items that are subject to the EAR. Some of these items were in existing ECCNs. Others were subject to the EAR, but not set forth in any ECCN. Such items are designated under the EAR as EAR99 items. Items that were subject to the EAR prior to being added to 600 series ECCNs were not subject to offsets reporting requirements.

On December 2, 2015, BIS published a proposed rule (*see* 80 FR 75438) to require reporting of offsets agreements in connection with sales of all items controlled in 600 series ECCNs, except for certain submersible and semi-submersible cargo transport vessels and related items that are not on the control lists of any of the multilateral export control regimes of which the United States is a member, regardless of whether the item was controlled on the USML or subject to the EAR prior to being controlled under a 600 series ECCN. BIS received no comments on that proposed rule and this rule adopts the text of the proposed rule without change. The preamble to that proposed rule contained a description of 600 series ECCNs and a discussion of the antecedents to the current 600 series ECCNs, which identified items that were moved from the USML to 600 series ECCNs and items that were moved from non-600 series ECCNs to 600 series ECCNs (*see* 80 FR 75438, 75439–75441, December 2, 2015). The facts presented in that discussion have not changed and it is not repeated here.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not materially change any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. The collection of offset reports has been approved by OMB under control number 0694–0084. The estimated number of annual responses is 30 and the estimated number of burden hours is 360. BIS believes that this rule will not materially change the number of responses or burden hours authorized under 0694–0084 because the primary impact of this rule is to restore reporting requirements that have lapsed since those estimates were made, and to retain reporting requirements that otherwise will lapse in the coming months. Although this rule will create new reporting requirements for some items that were subject to Department of Commerce export control jurisdiction prior to being added to 600 series ECCNs, the impact of those additions on the burden is likely to be insignificant because those items are primarily low value items such as military ground vehicles designed for non-combat use, which are not usually the subject of offset agreements. The higher value items that typically trigger offset requirements by the foreign government purchaser, such as combat aircraft, strategic airlifter aircraft, ships, missiles and missile defense systems, are remaining on the USML and their offset reporting requirements have not changed. In addition, any increase in the reporting burden by the imposition of offsets reporting requirements on items that have moved to 600 series ECCNs is likely to be offset by a reduction in that burden resulting from the removal of some items from the USML and their addition to non-600 series ECCNs, which are not subject to offsets reporting requirements. Those items are: Commercial spacecraft including satellites and related items, and certain energetic materials. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. BIS received no comments regarding the certification. Consequently, BIS has not prepared a final regulatory flexibility analysis.

Small entities include small businesses, small organizations and

small governmental jurisdictions. For purposes of assessing the impact of this rule on small entities, a small entity is defined as: (1) A small business according to the ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' effective January 22, 2014, published by the Small Business Administration (the SBA size standards); (2) a small governmental jurisdiction that is a government of a city, 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. BIS has determined that this rule will not affect any of these categories of small entities.

SBA's size standards classify businesses in various North American Industry Classification System (NAICS) codes as small based on their annual revenue or number of employees. For example, in 2014, the maximum annual revenue for a small business was $33.5 million and the maximum number of employees was 1,500. Since BIS began collecting data in 1994, virtually all of the submissions that it has received have been from a small number of very large companies that exceed the SBA size standards for a small business. Since 1994, the number of companies that submitted data to BIS pursuant to this regulation has not exceeded 26 per year. On average, the companies that submit data to BIS have annual revenues well in excess of $1 billion. For instance, in 2014, the most recent year for which BIS has data collected pursuant to this regulation, only one of the 26 companies that submitted data had reported revenue of less than $1 billion. That company had revenue of $120 million.

Some small businesses likely are involved in fulfilling offset obligations by acting as subcontractors to the large prime contractors that report directly to BIS, meaning that they report indirectly to BIS pursuant to this section. However, this rule will not significantly increase the burden on such companies. Most of the information collected by BIS pursuant to this section is already collected by such small businesses so that they can accurately account for their obligations under the offset agreement (which is imposed at the behest of the foreign buyer) and report them to the prime contractor. The only data element required by this rule that might not be needed for those reports to the prime contractor is the classification of offset agreements and transactions by NAICS code. Even subcontractors involved in the manufacture of defense articles are likely to conduct business with the U.S. government and, therefore, be required to classify their products and services in accordance with the NAICS (*See* System for Award Management User Guide—V. 1.8, July 23, 2012, Section 3.4, page 92, available at *https://www.sam.gov/sam/transcript/SAM_User_Guide_v1.8.pdf*). In addition, the U.S. government takes steps to facilitate selection of the correct NAICS code by private parties. The U.S. Census Bureau posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. BIS has included illustrative examples in § 701.4(c)(1)(iii) and (c)(2)(iv) on classifying military export sales and offset transactions by NAICS codes.

In addition, small governmental entities and small organizations are not likely to be involved in international defense trade, and will therefore have no reason to submit data to BIS pursuant to this regulation. Consequently, this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 701

Administrative practice and procedure, Arms and munitions, Business and industry, Exports, Government contracts, Reporting and recordkeeping requirements.

Accordingly, 15 CFR part 701 is amended as follows:

PART 701—[AMENDED]

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 50 U.S.C. 4568; E.O. 12919, 59 FR 29525, 3 CFR, 1994 Comp., p. 901; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. In § 701.2, revise paragraphs (a) and (b) to read as follows:

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of:

(1) Defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral ''6'' as its third character in the Commerce Control List found in Supplement No. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b, software controlled in ECCN 8D620.b and technology controlled in ECCN 8E620.b.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of:

(1) Defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral ''6'' as its third character in the Commerce Control List found in Supplement No. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b; software controlled in ECCN 8D620.b; and technology controlled in ECCN 8E620.b.

* * * * *

■ 3. In § 701.3, revise paragraph (a) to read as follows:

§ 701.3 Applicability and scope.

(a) This part applies to U.S. firms entering contracts that are subject to an offset agreement exceeding $5,000,000 in value and that are for the sale to a foreign country or foreign firm of: (1) Defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations; or

(2) Items controlled under an Export Control Classification Number (ECCN) that has the numeral ''6'' as its third character in the Commerce Control List found in Supplement No. 1 to part 774 of this chapter other than semi-submersible and submersible vessels specially designed for cargo transport and parts, components, accessories and attachments specially designed therefor controlled under ECCN 8A620.b; test, inspection and production equipment controlled in ECCN 8B620.b; software controlled in ECCN 8D620.b and technology controlled in ECCN 8E620.b.

* * * * *

Dated: February 24, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–04425 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; errata notice.

SUMMARY: This document contains corrections to the final rule (RM11–6–000) which published in the **Federal Register** on Wednesday, February 24, 2016 (81 FR 9090). The Final Rule provided the annual update to the fee schedule in Appendix A to Part 11, which lists per-acre rental fees by county (or other geographic area) for use of government lands by hydropower licensees and updated Appendix A to Part 11 with the fee schedule of per-acre rental fees by county (or other geographic area) from October 1, 2015, through September 30, 2016 (Fiscal Year 2016).

DATES: Effective March 1, 2016, and is applicable beginning February 24, 2016.

FOR FURTHER INFORMATION CONTACT: Norman Richardson, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6219, *Norman.Richardson@ferc.gov.*

SUPPLEMENTARY INFORMATION: On February 18, 2016 the Commission issued an *Annual Update to Fee Schedule for the Use of Government Lands for Hydropower Licensees* in the above-captioned proceeding. The Notice stated that the fiscal year was October 1, 2015 through September 30, 2015. This errata notice corrects the fiscal year to October 1, 2015 through September 30, 2016.

Issued: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04389 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900 253G]

25 CFR Part 20

RIN 1076–AF29

Financial Assistance and Social Services Programs; Burial Assistance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: Current regulations allow for burial assistance for eligible indigent Indians but require submission of the application within 30 days of the Indian's death. This rule would extend the deadline for filing an application to 180 days to address hardships resulting from the current short timeframe.

DATES: Comments on this rule must be received by March 31, 2016. This rule will become effective without further action on April 15, 2016.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs (BIA).'' The rule has been assigned Docket ID: BIA–2015–0003.

—*Email: elizabeth.appel@bia.gov.* Include the number 1076–AF29 in the subject line of the message.

—*Mail or hand-delivery:* Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240. Include the number 1076–AF29 on the outside of the envelope.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Changes
III. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation With Indian Tribes (E.O. 13175)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Information Quality Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of This Regulation
N. Public Availability of Comments
O. Required Determinations Under the Administrative Procedure Act

I. Background

The BIA provides financial assistance and social services to eligible Indians when comparable financial assistance or social services are either not available or not provided by State, Tribal, county, local or other Federal agencies. *See* 25 CFR 20.102. One type of financial assistance BIA provides under these regulations is burial assistance. *See* 25 CFR 20.324–20.326. The current regulations provide that a relative of a deceased Indian can apply for burial assistance for the deceased Indian but must submit the application within 30 days following death.

II. Description of Changes

This interim final rule extends the deadline by which a relative of a deceased Indian can apply for burial assistance for the deceased Indian from 30 days following death to 180 days following death. For many families, periods of bereavement and counseling do not fit within the short 30-day timeframe, and eligible applicants often do not seek out such resources or become aware of the burial assistance funds until weeks after their loss. The 30-day time restriction also creates barriers to eligible applicants dealing with other extenuating circumstances, such as delays in funeral billing and the processing of death certificates, which frequently exceed 30 days. This rule addresses these hardships by replacing the 30-day deadline with a more reasonable 180-day deadline.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. This rule extends the deadline for requesting burial assistance

funds but does not affect eligibility for such funds in any way.

(1) This rule will not have an effect of $100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The deadline extension may result in additional expenditures by the Federal Government for burial assistance but will not affect the economy as a whole.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the existing eligibility requirements ensure there is no duplication of services by different agencies.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients. The rule extends the time period in which an eligible applicant may request burial assistance but does not otherwise affect the applicant's rights or obligations.

(4) These regulatory changes do not raise novel legal or policy issues because they do not substantively change the financial assistance or social services programs.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule extends the deadline for requesting burial assistance funds but does not result in expenditures by any entity other than the Federal Government.

D. Unfunded Mandates Reform Act

This interim final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this interim final rule has no 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. This rule extends the deadline for requesting burial assistance funds but does not affect States or the relationship with States in any way.

G. Civil Justice Reform (E.O. 12988)

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian Tribes and Indian trust assets and have identified potential effects. The Department received input from at least one Tribe requesting the change effected by this rule.

I. Paperwork Reduction Act

This information collection for burial assistance is authorized by OMB Control Number 1076–0017, with an expiration of 06/30/2017. BIA will review whether its current estimates on the number of applications submitted annually when it next requests renewal to determine whether there is an increase as a result of this rule.

J. National Environmental Policy Act

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This interim final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. 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.

O. Required Determinations Under the Administrative Procedure Act

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b)(B). Under section 553(b)(B), we find that prior notice and comment are unnecessary because this is a minor, technical action that imposes an unnecessary burden on applicants. This rule reduces burden on eligible applicants by extending the time period in which a request for burial assistance may be submitted. Delay in publishing this rule would unnecessarily continue imposing a hardship on eligible applicants who have recently lost a relative. Delaying the rule by publication of a proposed rule would therefore be contrary to the public interest.

We have requested comments on this interim final rule. We will review any comments received and if we receive significant adverse comments, we will by a future publication in the **Federal Register**, either initiate a proposed rulemaking or revise or withdraw this rule.

List of Subjects in 25 CFR Part 20

Indians, Public assistance programs, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR part 20 as follows:

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAMS

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 25 U.S.C. 13; Pub. L. 93–638; Pub. L. 98–473; Pub. L. 102–477; Pub. L. 104–193; Pub. L. 105–83.

■ 2. Revise paragraph (a) of § 20.325 to read as follows:

§ 20.325 Who can apply for Burial Assistance?

* * * * *

(a) To apply for burial assistance under this section, you must submit the application to the social services worker. You must submit this application within 180 days following death.

* * * * *

Dated: February 23, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–04335 Filed 2–29–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900 253G]

25 CFR Part 151

RIN 1076–AF28

Title Evidence for Trust Land Acquisitions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule deletes the requirement for fee-to-trust applicants to furnish title evidence that meets the ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' issued by the U.S. Department of Justice (DOJ), and replaces the requirement with a more targeted requirement for title evidence, because adherence to the DOJ standards is not required for acquisitions of land in trust for individual Indians or Indian tribes.

DATES: Comments on this rule must be received by March 31, 2016. This rule will become effective without further action on April 15, 2016.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2016–0001.

—*Email: elizabeth.appel@bia.gov.* Include the number 1076–AF28 in the subject line of the message.

—*Mail or hand-delivery:* Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240. Include the number 1076–AF28 on the outside of the envelope.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Changes
III. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation With Indian Tribes (E.O. 13175)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Information Quality Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of this Regulation
N. Public Availability of Comments
O. Required Determinations Under the Administrative Procedure Act

I. Background

Section 5 of the Indian Reorganization Act (IRA) is the primary authority for the Secretary of the Interior (Secretary) to acquire land in trust for individual Indians or Indian tribes. 25 U.S.C. 465. Congress has also enacted other statutes that authorize the acquisition of lands for specific tribes. The Department's regulations at 25 CFR part 151 establish the process for taking land into trust pursuant to section 465 and other statutory authority. Section 151.13 of the regulations requires the applicant to furnish title evidence meeting the ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,'' issued by DOJ if the Secretary determines to approve a fee-to-trust application.

II. Description of Changes

The current rule provides that, once the Secretary determines that he or she will approve a request to take land into trust, he or she must acquire, or require the applicant to furnish, title evidence meeting the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States.* Those standards have since been re-issued as the Department of Justice Title Standards 2001: A guide for the preparation of title evidence in land acquisition by the United States of America. This interim final rule deletes the requirement for the applicant to furnish title evidence meeting the DOJ standards because those standards are not required for acquisitions of land in trust for individual Indians or Indian tribes.

The rule replaces the DOJ standard with a more targeted title evidence standard that requires the applicant to furnish written evidence that the applicant has ownership, or will have

ownership, of title and how title was acquired, as well as either (1) a current title insurance commitment; or (2) the policy of title insurance issued at the time of the applicant's or current owner's acquisition of the interest and an abstract dating from the time the interest was acquired. Of course, this rule does not preclude applicants from having title confirmed pursuant to all requirements of the Department of Justice Title Standards if the applicant so chooses.

The rule continues the current requirement that title evidence must be submitted and reviewed by the Department before title is transferred. The rule also continues the practice of requiring the elimination of any legal claims, including but not limited to liens, mortgages, and taxes, determined by the Secretary to make title unmarketable, prior to acceptance in trust. Finally, the rule continues the requirement for the Bureau of Indian Affairs (BIA) to complete a Certificate of Inspection and Possession prior to trust transfer.

This rule will apply to all trust applications submitted after the effective date. This rule will also apply to trust applications that are pending and for which the Preliminary Title Opinion has not yet been prepared by the Office of the Solicitor as of the effective date. However, if applicants have already submitted evidence meeting the DOJ Title Standards, they need not re-submit evidence pursuant to this rule. This rule will not apply to trust applications that are pending and for which the Preliminary Title Opinion has already been prepared by the Office of the Solicitor as of the effective date.

BIA plans to update its fee-to-trust handbook to address the new rule.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. This rule clarifies the standard of title evidence for acquisitions of trust land by the Secretary of the Interior, and will not have any economic effects or raise any novel issues.

(1) This rule will not have an effect of $100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency vested with the authority to take land into trust on behalf of Indian tribes and individual Indians.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients. The rule provides a more targeted requirement for title evidence for an applicant but does not otherwise affect the applicant's rights or obligations.

(4) These regulatory changes do not raise novel legal or policy issues because the regulations do not substantively change the acquisition of land from unrestricted fee status to trust status.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it will not result in additional expenditures by any entity.

D. Unfunded Mandates Reform Act

This interim final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this interim final rule has no 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. This rule removes the requirement for title evidence to comply with DOJ standards and replaces this requirement with a more targeted requirement for title evidence; it does not affect States or the relationship with States in any way.

G. Civil Justice Reform (E.O. 12988)

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian Tribes and Indian trust assets and have determined there is no ''substantial direct effect'' on Tribes, on the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The rule will affect Tribes who apply to take land into trust, in that the rule removes unnecessary submissions of documentation. However, the rule does not have a substantial direct effect on Tribes because Tribes can still submit evidence meeting the DOJ title standards should they so choose and allowing the option of submitting a past title insurance policy and an abstract of title is intended to be less burdensome than the existing rule. The Department

is committed to meaningful consultation with Tribes on substantive matters that have a substantial direct effect on Tribes, in accordance with E.O. 13175 and the Department of the Interior Policy on Consultation with Indian Tribes.

I. Paperwork Reduction Act

This information collection for trust land applications is authorized by OMB Control Number 1076–0100, with an expiration of 08/31/16. The elimination of the requirement to comply with DOJ standards is not expected to have a quantifiable effect on the hour burden estimate for the information collection, but BIA will review whether its current estimates are affected by this change at the next renewal.

J. National Environmental Policy Act

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This interim final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. 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.

O. Required Determinations Under the Administrative Procedure Act

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b)(B). Under section 553(b)(B), we find that prior notice and comment are unnecessary because this is a minor, technical action that eliminates an unnecessary requirement. This rule removes the unnecessary requirement that the title evidence the applicant submits must comply with DOJ standards for title evidence. Delay in publishing this rule would unnecessarily continue imposing the unnecessary requirement on applicants and would therefore be contrary to the public interest.

We have requested comments on this interim final rule. We will review any comments received and if we receive significant adverse comments, we will by a future publication in the **Federal Register**, initiate a proposed rulemaking or revise or withdraw this rule.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR part 151 as follows:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat.1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.13 to read as follows:

§ 151.13 Title review.

(a) If the Secretary determines that she will approve a request for the acquisition of land from unrestricted fee status to trust status, she shall require the applicant to furnish title evidence as follows:

(1) Written evidence of the applicant's title or that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

(2) Written evidence of how title was acquired by the applicant or current owner; and

(3) Either:

(i) A current title insurance commitment; or

(ii) The policy of title insurance issued at the time of the applicant's or current owner's acquisition of the land and an abstract of title dating from the time the land was acquired by the applicant or current owner.

(b) After reviewing submitted title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition, and she shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable.

Dated: February 23, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–04332 Filed 2–29–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9756]

RIN 1545–AX46

Regulations Under IRC Section 7430 Relating to Awards of Administrative Costs and Attorneys' Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to awards of administrative costs and attorneys' fees. The final regulations conform the regulations to the amendments made in

the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998. The regulations affect taxpayers seeking attorneys' fees and costs.

DATES:

Effective date: The final regulations are effective on March 1, 2016.

Applicability date: For date of applicability, see § 301.7430–6.

FOR FURTHER INFORMATION CONTACT: Shannon K. Castañeda at (202) 317–5437 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains final amendments to Treasury Regulations under section 7430 of the Internal Revenue Code (Code) relating to awards of administrative and attorneys' fees. Section 7430 generally permits a prevailing party in an administrative or court proceeding to seek an award for reasonable administrative and litigation costs incurred in connection with such proceedings. The amendments incorporate the 1997 and 1998 amendments to section 7430, which were enacted as part of the Taxpayer Relief Act of 1997 (TRA), Public Law 105–34, 111 Stat. 788 (Aug. 5, 1997), and the IRS Restructuring and Reform Act of 1998 (RRA '98), Public Law 105–206, 112 Stat. 685 (Jul. 22, 1998).

The Treasury Department and the Internal Revenue Service published a notice of proposed rulemaking (REG–111833–99) in the **Federal Register**, 74 FR 61589, on November 25, 2009 (the NPRM), proposing amendments to the regulations under section 7430. A public hearing was scheduled for March 10, 2010. The Internal Revenue Service did not receive any requests to testify at the public hearing, and the public hearing was cancelled. Two written comments responding to the NPRM were received and are available for public inspection at *http://www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury Decision.

II. Statutory Provisions

Section 7430 generally authorizes a court to award administrative and litigation costs, including attorneys' fees, to a prevailing party in an administrative or court proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty. To qualify as a ''prevailing party'' a taxpayer must substantially prevail as to the amount in controversy or the most significant issue or set of issues in the proceeding, exhaust the administrative remedies, meet net worth and size limitations, and pay or incur the costs. The taxpayer generally cannot qualify for an award of such costs, however, if the government establishes that its position in the proceeding was substantially justified.

The TRA contained several amendments to section 7430 that are incorporated in the amendments to the regulations. First, the TRA provided that a taxpayer has ninety days after the date the Internal Revenue Service mails to the taxpayer a final decision determining tax, interest, or a penalty, to file an application with the Internal Revenue Service to recover administrative costs. Section 7430 had previously been silent as to the timing for seeking administrative costs. Second, the TRA provided that a taxpayer has ninety days after the date the Internal Revenue Service mails to the taxpayer, by certified or registered mail, a final adverse decision regarding an award of administrative costs, to file a petition with the Tax Court. Section 7430 had previously been silent as to the timing for seeking review in the Tax Court. Third, the TRA clarified the application of the net worth and size limitations imposed by section 7430(c)(4) by providing that individuals filing joint returns should be treated as separate taxpayers for purposes of determining net worth. The TRA added trusts to the list of taxpayers subject to the net worth and size limitations and also specified the date on which the net worth and size determination should be made. Before the TRA's clarification of the net worth and size limitations, section 7430 had stated only that a prevailing party must meet the requirement of the first sentence of section 2412(d)(1)(B) of Title 28. Section 2412(d)(2)(B) establishes the net worth and size limitations of the Equal Access to Justice Act. See 28 U.S.C. 2412 (EAJA). The TRA also added section 7436 to the Code, which gives the Tax Court jurisdiction in certain employment tax cases. Section 7436(d)(2) provides that section 7430 applies to proceedings brought under section 7436.

RRA '98 also contained several amendments affecting section 7430. First, RRA '98 increased the hourly rate limitation for attorneys' fees in section 7430(c)(1) from $110 per hour to $125 per hour. Second, two special factors were added that may be considered to allow an increase in an attorney's hourly rate: (1) Difficulty of the issues presented and (2) local availability of tax expertise. Prior to the enactment of RRA '98, the only special factor included in section 7430(c)(1) was the limited availability of qualified attorneys. Third, RRA '98 added a provision that requires a court to consider whether the Internal Revenue Service has lost cases with substantially similar issues in other circuit courts of appeal in deciding whether the Internal Revenue Service's position was substantially justified. Fourth, RRA '98 created an exception to the requirement that to recover attorneys' fees, the taxpayer must have paid or incurred the fees. The exception provides that if an individual who is authorized to practice before the Tax Court or the Internal Revenue Service is representing the taxpayer on a *pro bono* basis, then the taxpayer may petition for an award of reasonable attorneys' fees in excess of the amounts that the taxpayer paid or incurred, as long as the fee award is ultimately paid to the individual who represented the taxpayer or such individual's employer. The Treasury Department and the Internal Revenue Service are releasing, simultaneously with these final regulations, a revenue procedure detailing the procedures for the recovery of attorneys' fees in the *pro bono* context. Fifth, RRA '98 extended the period for recovery of reasonable administrative costs to include costs incurred after the date on which the first letter of proposed deficiency, commonly known as a 30-day letter, is mailed to the taxpayer. Previously, administrative costs only included costs incurred on or after the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Summary of Regulations

The final regulations reflect the changes made by the TRA as originated in the proposed regulations. Clarifying changes included in the proposed regulations and adopted here address the calculation of net worth. Section 7430 imposes net worth and size limitations on who can recover costs. First, the proposed and final regulations specify which limitations with respect to net worth and size apply when a taxpayer is an owner of an unincorporated business. Second, the proposed and final regulations clarify the net worth and size limitations in cases involving partnerships subject to the unified audit and litigation procedures of sections 6221 through 6234 of the Code (the TEFRA partnership procedures).

The final regulations reflect a further clarification that was not included in the proposed regulations. The proposed regulations merely noted that the net

worth of taxpayers who filed joint returns should be calculated separately. The final regulations further explain how the separate calculation will be conducted in various situations. When taxpayers who file joint returns jointly petition the court and incur joint costs, each taxpayer qualifies for a separate net worth limitation of $2 million, but the limitation will be evaluated jointly. As such, taxpayers will meet the net worth limitation so long as their combined assets are equal to or less than $4 million, regardless of how the assets are distributed. This prevents high net worth taxpayers from avoiding the net worth limitation by seeking costs on behalf of a spouse with a lower net worth. When taxpayers file a joint return, but petition the court separately and incur separate costs, the limitation will be evaluated separately. As such, each taxpayer will have his/her assets applied toward a separate $2 million cap for each spouse. This analysis protects the ability of spouses with fewer assets to seek representation when the spouse with higher-value assets is unwilling or unable to incur those costs.

The final regulations do not adopt the proposed rule in §§ 301.7430–5(g)(1) and (2) that the net worth limitation is computed based on the fair market value of the taxpayer's assets. The existing section 7430 regulations do not address this issue and no comments from the public were received on this issue. The existing case law, however, generally recognizes that the net worth calculation is made based on the acquisition costs of the taxpayer's assets. Because the case law is clear and provides an existing standard for determining net worth, the final regulations follow the case law and do not adopt the proposed rule in § 301.7430–5(g)(1) and (2) relating to the determination of the value of the taxpayer's assets. Accordingly, the final regulations add a new paragraph (6) to § 301.7430–5(g) to clarify that for purposes of determining net worth, assets are valued based on the cost of their acquisition.

Consistent with the changes made by RRA '98, the final regulations clarify that a taxpayer may be eligible to recover reasonable administrative costs from the date of the 30-day letter only if at least one issue (other than recovery of administrative costs) remains in dispute as of the date that the Internal Revenue Service takes a position in the administrative proceeding. This requirement follows RRA '98's prevailing party definition. Under the changes made by RRA '98, the position of the United States is established in the administrative proceeding on the earlier of the date the taxpayer receives the notice of the decision of the Internal Revenue Service Office of Appeals or the date of the notice of deficiency. Where the Internal Revenue Service concedes an issue in the Office of Appeals prior to issuing a notice of deficiency or notice of the decision of the Office of Appeals, the United States does not take a position, so an award of administrative costs is not available. Where the Internal Revenue Service concedes an issue in the notice of decision, the position of the United States is necessarily substantially justified. *See, for example, Fla. Country Clubs, Inc.* v. *Commissioner,* 122 T.C. 73, 78–86 (2004), *aff'd,* 404 F.3d 1291 (11th Cir. 2005) (Where the Office of Appeals determined that taxpayer did not owe any additional tax after issuing a 30-day letter, but without ever issuing a notice of deficiency or notice of determination, the Internal Revenue Service did not take a position), *Purciello* v. *Commissioner,* T.C. Memo. 2014–50 (Where the Internal Revenue Service conceded the matter at issue in full in the notice of decision, the Internal Revenue Service was substantially justified).

Summary of Comments and Explanation of Revisions

The Treasury Department and the Internal Revenue Service received two written comments in response to the NPRM, both of which related to the provisions in the proposed regulations providing for the award of reasonable attorneys' fees when an individual is representing a party on a *pro bono* basis. This section addresses those comments. This section also describes the significant differences between the rules proposed in the NPRM and those adopted in the final regulations.

As discussed in this preamble, prior to RRA '98, only those costs incurred by the taxpayer were eligible for payment under section 7430. RRA '98 provided that the court could award costs in excess of the costs actually incurred by the taxpayer if those costs were less than the reasonable attorneys' fees because an individual is representing the taxpayer on a *pro bono* basis. The statute defined *pro bono* as representation provided for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. Finally, the statute directed that awards for *pro bono* representation must be paid to the representative or that representative's employer, as opposed to section 7430's general requirement that awards are paid to the taxpayer.

1. Persons on Whose Behalf Pro Bono Representation Must Be Provided

Section 7430 establishes net worth and size limitations that a taxpayer must meet in order to recover administrative or litigation costs. The proposed regulations included an additional requirement related to a taxpayer's net worth: They stated that, for reasonable administrative costs to be awarded for legal services provided on a *pro bono* basis, the services must be provided to or on behalf of either (A) persons of limited financial means who meet the eligibility requirements for programs funded by the Legal Services Corporation, or (B) organizations operating primarily to address the needs of persons with limited means if payment of a standard legal fee would significantly deplete the organization's financial resources. Both of the commentators recommended revising the regulations to provide that organizations to whom or on whose behalf representation may be provided include low income taxpayer clinics, clinics participating in the Internal Revenue Service student tax clinic program, and clinics operating as approved clinics in the United States Tax Court. Both commentators also proposed changes in the proposed regulations' income limitation for persons on whose behalf *pro bono* legal representation must be provided. The proposed regulations provided an income limitation based on the eligibility requirements for programs funded by the Legal Services Corporation (see 42 U.S.C. 2996e(a)(1)(A)), which is 125 percent of the current Federal Poverty Guidelines published by the United States Department of Health and Human Services. One commentator recommended that the limitation be expanded to include individuals and households whose incomes do not exceed 250 percent of the poverty level as determined in accordance with criteria established by the Director of the Office of Management and Budget. The other commentator recommended that the regulations should not contain an income threshold for persons on whose behalf pro bono representation is provided, and recommended that the only limitation should be that *pro bono* representation must be provided to persons with limited means if payment of a standard legal fee would significantly deplete the person's financial resources.

The Treasury Department and the Internal Revenue Service have carefully considered both comments and have considered the difficulty of establishing

fair and easily applied limitations on eligibility for attorneys' fees for *pro bono* representation based upon the income and financial resources of the taxpayer. The Treasury Department and the Internal Revenue Service have determined that eligibility should not be limited based on the income or financial resources of the recipient of the representation beyond the limit provided by section 7430(c)(4)(A)(ii). As a result, the rule contained in the proposed regulations is not being finalized. This change makes it unnecessary to revise the eligibility requirements as proposed by the commentators.

2. Rate of Reimbursement for Attorneys Who Do Not Have a Customary Hourly Rate

An example in the proposed regulations stated that an award for representation by attorneys employed by a low income taxpayer clinic who do not have a customary hourly rate would be limited to the rate prescribed under section 7430(c)(1)(B). Section 7430(c)(1)(B)(iii) provides for attorneys' fees based on prevailing market rates for the kind or quality of services furnished, except that the fee is limited to a statutory rate of $125 an hour plus cost of living adjustments, unless a special factor justifies a higher rate. One commentator stated that because of the difficulty of determining the prevailing market rates for the kind or quality of services furnished in the case of attorneys representing low income taxpayers, and because of the unlikelihood that a low income taxpayer clinic or student taxpayer clinic program would become involved in a case that would justify a rate in excess of the statutory rate, the rate for *pro bono* attorneys who do not have a customary hourly rate should be set at the statutory rate.

After publishing the proposed regulations, the Treasury Department and the Internal Revenue Service determined that details such as the rate of compensation for *pro bono* attorneys who do not have a customary hourly rate would more logically be contained in a revenue procedure. The Treasury Department and the Internal Revenue Service are releasing simultaneously Rev. Proc. 2016–17, which provides that *pro bono* attorneys who do not charge an hourly rate receive the statutory rate for their services unless they establish that a special factor, as described in section 7430(c)(1)(B)(iii), applies to justify a higher hourly rate. The final regulations, therefore, do not contain the example in the proposed regulations on the rate applicable to *pro bono* attorneys who do not have a customary hourly rate. Instead, these recommendations are taken into account in Rev. Proc. 2016–17.

3. Enhanced Rate Based on Limited Availability of Pro Bono Representatives With Tax Expertise

One commentator recommended a change to the section of the proposed regulations that provided that the limited local availability of tax expertise is a special factor that would justify an award at a rate higher than the statutory rate. The proposed regulations provided that limited local availability of tax expertise is established by demonstrating that a representative possessing tax expertise is not available in the taxpayer's geographical area. The commentator stated that she did not think this special factor produces a fair result in the case of *pro bono* representatives because, even if attorneys possessing tax expertise practice within a taxpayer's geographic area, those attorneys may not be willing or able to take on *pro bono* cases. The commentator suggested that the regulation be revised so that, in *pro bono* cases, the special factor based on the limited local availability of tax expertise would apply if there is no representative possessing tax expertise practicing within the taxpayer's geographic area who is willing or able to represent the taxpayer on a *pro bono* basis.

The Treasury Department and the Internal Revenue Service disagree that the proposed rule does not produce a fair result in the case of *pro bono* representatives. The rule permits the award of an enhanced rate based on the limited local availability of tax expertise because such a circumstance reasonably could have an unfair impact on a taxpayer who pays or incurs liability for attorneys' fees. For example, the taxpayer who must go outside his geographic area to retain a representative with tax expertise might be required to pay more for the representation than the generally prevailing market rate for representatives in the taxpayer's geographic area. Taxpayers who are represented on a pro bono basis are entitled to the enhanced rate in the same manner as taxpayers who incur fees. Therefore, the final regulations adopt the rule in the proposed regulations without change.

4. Payments for Work Performed by Students and Hourly Rates for Students

The proposed regulations did not discuss issues relating to the award of attorneys' fees based on the work of volunteer law students. Both commentators recommended clarifying the proposed regulations to state that payment for work performed by law students should be made to the attorneys under whom the students work or to such an attorney's employer rather than to the law students.

One commentator expressed concern that fees may be awarded based on the work of law students who volunteer in low income taxpayer clinics and clinics participating in the Internal Revenue Service student taxpayer clinic program, but that such students do not have customary hourly rates. The commentator proposed setting an hourly rate for law students at 40 percent of the statutory hourly rate for attorneys. The commentator also requested clarification that the work of law students can be compensated as attorneys' fees or costs regardless of whether the students have special orders authorizing them to practice before the Internal Revenue Service.

The Treasury Department and the Internal Revenue Service agree that awarding fees based on the work of volunteer students may be appropriate and are addressing this issue in a revenue procedure being released contemporaneously with these final regulations. In Rev. Proc. 2016–17, the Treasury Department and the Internal Revenue Service clarify that work performed by students authorized to practice before the Internal Revenue Service or the Tax Court may be compensable at 35 percent of the statutory hourly rate for attorneys, unless the student can demonstrate that a rate in excess of that 35 percent is appropriate, with the award payable to the clinic or organization with which the student is affiliated. Rev. Proc. 2016–17 further clarifies that with respect to students who are not authorized to practice before the Internal Revenue Service or the Tax Court, the requester will have the burden of proving that an award of costs is appropriate and what rate of compensation is reasonable.

5. Effective/Applicability Date

The proposed regulations provided that the changes in §§ 301.7430–2, 301.7430–3, 301.7430–4, and 301.7430–5 would apply to costs incurred and services performed as of the date of publication of the final regulations, without regard to when a petition was filed. That meant that these changes could have applied in cases where a petition was filed before publication of the final regulations in the **Federal Register**. To ensure that these changes are not mandatory for cases in which a

petition was filed before publication of the final regulations in the **Federal Register**, the effective/applicability date in § 301.7430–6 of the final regulations has been revised to provide that the changes in §§ 301.7430–2, 301.7430–3, 301.7430–4, and 301.7430–5 apply to costs incurred and services performed in cases in which the petition was filed on or after the date of publication of the final regulations in the **Federal Register**. However, taxpayers may rely on the changes contained in §§ 301.7430–2, 301.7430–3, 301.7430–4, and 301.7430–5 of the final regulations for costs incurred and services performed in which a petition was filed prior to March 1, 2016.

In addition, no effective/applicability date was proposed with respect to the rules for qualified offers under § 301.7430–7, but one has been added to the final regulations. Accordingly, under § 301.7430–7(f) of the final regulations, section 301.7430–7 applies to qualified offers made in administrative court proceedings described in section 7430 after December 24, 2003, except that section 301.7430–7(c)(8) is effective as of the date these final regulations are published in the **Federal Register**.

Statement of Availability for IRS Document

For copies of recently issued Revenue Procedures, Revenue Ruling, notices and other guidance published in the Internal Revenue Bulletin, visit the IRS Web site at *http://www.irs.gov.*

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of these regulations is Shannon K. Castañeda, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoptions of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7430–0 is amended by:

■ 1. Adding an entry for § 301.7430–3(c)(4).

■ 2. Adding entries to § 301.7430–4, paragraphs (b)(3)(iii)(A) through (F) and (d).

■ 3. Revising the entries for § 301.7430–5.

■ 4. Revising the section heading for § 301.7430–6.

■ 5. Adding entries for §§ 301.7430–7 and 301.7430–8.

The additions and revisions read as follows:

§ 301.7430–0 Table of contents.

* * * * *

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

* * * * *

(c) * * *

(4) First letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals.

* * * * *

§ 301.7430–4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) In general.

(B) Special factor.

(C) Limited availability.

(D) Local availability of tax expertise.

(E) Difficulty of the issues.

(F) Example.

* * * * *

(d) Pro bono representation.

(1) In general.

(2) Requirements.

(3) Nominal fee.

(4) Payment when representation provided for a nominal fee.

(5) Requirements.

(6) Hourly rate.

(7) Examples.

§ 301.7430–5 Prevailing party.

(a) In general.

(b) Position of the Internal Revenue Service.

(c) Examples.

(d) Substantially justified.

(1) In general.

(2) Position in courts of appeal.

(3) Examples.

(4) Included costs.

(5) Examples.

(6) Exception.

(7) Presumption.

(e) Amount in controversy.

(f) Most significant issue or set of issues presented.

(1) In general.

(2) Example.

(g) Net worth and size limitations.

(1) Individuals.

(2) Estates and trusts.

(3) Others.

(4) Special rule for charitable organizations and certain cooperatives.

(5) Special rule for TEFRA partnerships.

(6) Determining net worth.

(h) Determination of prevailing party.

(i) Examples.

§ 301.7430–6 Effective/applicability dates.

§ 301.7430–7 Qualified offers.

(a) In general.

(b) Requirements for treatment as a prevailing party based upon having made a qualified offer.

(1) In general.

(2) Liability under the last qualified offer.

(3) Liability pursuant to the judgment.

(c) Qualified offer.

(1) In general.

(2) To the United States.

(3) Specifies the offered amount.

(4) Designated at the time it is made as a qualified offer.

(5) Remains open.

(6) Last qualified offer.

(7) Qualified offer period.

(8) Interest as a contested issue.

(d) [Reserved].

(e) Examples.

(f) Effective date.

§ 301.7430–8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) In general.

(b) Prevailing party.

(c) Administrative proceeding.

(d) Costs incurred after filing of bankruptcy petition.

(e) Time for filing claim for administrative costs.

(f) Effective date.

■ **Par. 3.** Section 301.7430–1 is amended by revising paragraphs (b)(1)(ii)(A), (d)(1)(i) and (ii) and (d)(2) introductory text to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter or any successor published guidance; and

* * * * *

(d) * * *

(1) * * *

(i) The party follows all applicable Internal Revenue Service procedures for contesting the matter (including filing a written protest or claim, requesting an administrative appeal, and participating in an administrative hearing or conference); or

(ii) If there are no applicable Internal Revenue Service procedures, the party submits to the Area Director of the area having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to the requested relief, and the Area Director denies the claim for relief in writing or fails to act on the claim within a reasonable period after the claim is received by the Area Director.

(2) For purposes of paragraph (d)(1)(ii) of this section, a *reasonable period* is—

* * * * *

■ **Par. 4.** Section 301.7430–2 is amended by:

■ 1. Revising paragraph (a).

■ 2. Removing the semicolon at the end of paragraph (c)(3)(i)(B) and adding a period in its place, and adding a sentence at the end of the paragraph.

■ 3. Adding a sentence at the end of paragraph (c)(3)(i)(E).

■ 4. Revising paragraph (c)(3)(ii)(C), adding paragraph (c)(3)(iii)(C)., and revising paragraph (c)(5).

■ 5. Adding a sentence at the end of paragraph (c)(7).

■ 6. Revising paragraph (e).

The additions and revisions read as follows:

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs from the Internal Revenue Service. Paragraph (c) of this section describes the procedures that a taxpayer must follow to recover reasonable administrative costs. Paragraphs (b) and (c) apply to requests for administrative costs regarding all administrative proceedings within the Internal Revenue Service.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) * * * For costs incurred after January 18, 1999, if the taxpayer alleges that the United States has lost in courts of appeal for other circuits on substantially similar issues, the taxpayer must provide, for each such case, the full name of the case, volume and pages of the reporter in which the opinion appears, the circuit in which the case was decided, and the year of the opinion;

* * * * *

(E) * * * This statement must identify whether the representation is on a pro bono basis as defined in § 301.7430–4(d) and, if so, to whom payment should be made. Specifically, the statement must direct whether payment should be made to the taxpayer's representative or to the representative's employer.

(ii) * * *

(C) For costs incurred after January 18, 1999, if more than $125 per hour (as adjusted for an increase in the cost of living pursuant to § 301.7430–4(b)(3)) is claimed for the fees of a representative in connection with the administrative proceeding, an affidavit is necessary stating that a special factor described in § 301.7430–4(b)(3) is applicable, such as the difficulty of the issues presented in the case or the lack of local availability of tax expertise. If a special factor is claimed based on specialized skills and distinctive knowledge as described in § 301.7430–4(b)(2)(ii), the affidavit should state—

(*1*) Why the specialized skills and distinctive knowledge were necessary in the representation;

(*2*) That there is a limited availability of representatives possessing these specialized skills and distinctive knowledge; and

(*3*) How the representative's education and experience qualifies the representative as someone with the necessary specialized skills and distinctive knowledge.

(iii) * * *

(C) In cases of pro bono representation, time records similar to billing records, detailing the time spent and work completed, must be submitted for the requested fees.

* * * * *

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a written request for costs within 90 days after the date the final adverse decision of the Internal Revenue Service with respect to all tax, additions to tax, interest, and penalties at issue in the administrative proceeding is mailed or otherwise furnished to the taxpayer. For purposes of this section, *interest* means the interest that is specifically at issue in the administrative proceeding independent of the taxpayer's objections to the underlying tax, additions to tax, and penalties imposed. The final decision of the Internal Revenue Service for purposes of this section is the document that resolves the taxpayer's liability with regard to all tax, additions to tax, interest, and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed or otherwise furnished to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day that is not a Saturday, Sunday, or a legal holiday as defined by section 7503.

* * * * *

(7) * * * Once a notice of decision denying (in whole or in part) an award for reasonable administrative costs is mailed by the Internal Revenue Service via certified mail or registered mail as required by paragraph (c)(6) of this section, a taxpayer may obtain judicial review of that decision by filing a petition for review with the Tax Court prior to the 91st day after the mailing of the notice of decision.

* * * * *

(e) The following examples primarily illustrate paragraph (a) of this section:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. The administrative file contains certain documents provided by A as substantiation for the tax matters at issue. Appeals determines that the information submitted is insufficient. Appeals then issues a notice of deficiency. After receiving the notice of deficiency but before the 90-day period for filing a petition with the Tax Court has expired, and before filing a petition with the Tax Court, A convinces Appeals that the information previously submitted and

reviewed by Appeals is sufficient and, therefore, the notice of deficiency is incorrect and A owes no additional tax. Pursuant to section 6212(d), the notice of deficiency is rescinded. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that Appeals did not rely on any new information provided by A in rescinding the notice of deficiency and that all of the other requirements of section 7430 are satisfied, A may recover reasonable administrative costs incurred after the date of the 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430–3(c)). To recover these costs, A must file a request for administrative costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no additional tax.

Example 2. Taxpayer B files a request for an abatement of interest pursuant to section 6404 and the regulations thereunder. The Area Director issues a notice of proposed disallowance of the abatement request (akin to a 30-day letter). B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of disallowance of the abatement request. B does not file suit in the Tax Court, but instead contacts the Appeals office within 180 days after the mailing date of the notice of disallowance of the abatement request to attempt to reverse the decision. B convinces the Appeals office that the notice of disallowance is in error. The Appeals office agrees to abate the interest and mails the taxpayer a notification of this decision. The mailing date of the notification from Appeals of the decision to abate interest commences the 90-day period from which the taxpayer may request administrative costs. Assuming that Appeals did not rely on any new information provided by B in reversing its notice of disallowance, and that all of the other requirements of section 7430 are satisfied, B may recover reasonable administrative costs incurred after the date the Area Director issued the notice of proposed disallowance of the abatement request (the administrative proceeding date as defined in Treas. Reg. § 301.7430–3(c)). To recover these costs, B must file a request for costs with the Appeals office personnel who settled B's tax matter, or if that person is unknown to B, with the Area Director of the area that considered the underlying matter within 90 days after the date of mailing of the Office of Appeals' final decision that B is entitled to abatement of interest.

Example 3. Taxpayer C receives a notice of proposed adjustment and employment tax 30-day letter. C requests and is granted Appeals office consideration. The administrative file contains certain documents provided by C to support C's position in the tax matters at issue. Appeals determines that the documents submitted are insufficient. Appeals then issues a notice of determination of worker classification. After receiving the notice of determination of worker classification but before the 90-day period for filing a petition with the Tax Court has expired, C convinces Appeals that the documents previously submitted and reviewed by Appeals adequately support its position and, therefore, C owes no additional employment tax. Appeals then closes the case showing a zero tax adjustment and mails C a no-change letter. Assuming that Appeals did not rely on any new information provided by C in reversing its notice of determination of worker classification, and that all of the other requirements of section 7430 are satisfied, C may recover reasonable administrative costs incurred after the date of the notice of proposed adjustment and 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430–3(c)). To recover these costs, C must file a request for administrative costs with the Appeals office personnel who settled C's tax matter, or if that person is unknown to C, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that C owes no additional tax.

■ **Par. 5.** Section 301.7430–3 is amended by:

■ 1. Revising paragraphs (b), (c)(1), and (3).

■ 2. Adding paragraph (c)(4).

■ 3. Revising paragraph (d).

The addition and revisions read as follows:

§ 301.7430–3 Administrative proceeding and administrative proceeding dates.

* * * * *

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). A collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include collection due process hearings under sections 6320 and 6330 (unless the underlying tax liability is properly at issue), and those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 or to remedy any unauthorized collection action as described by section 7433, except those collection actions described by section 7433(e). An action or procedure directly relating to a claim for refund after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date*—(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term *administrative proceeding date* means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals;

(ii) The date of the notice of deficiency; or

(iii) The date on which the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.

* * * * *

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, the following will be treated as a notice of deficiency:

(i) A notice of final partnership administrative adjustment described in section 6223(a)(2).

(ii) A notice of determination of worker classification issued pursuant to section 7436.

(iii) A final notice of determination denying innocent spouse relief issued pursuant to section 6015.

(4) *First letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals.* Generally, the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals is the first letter issued to the taxpayer that describes the proposed adjustments and advises the taxpayer of the opportunity to contact the Office of Appeals. It also may be a claim disallowance or the first letter of determination that allows the taxpayer an opportunity for administrative review in the Office of Appeals.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency, A does not file a petition with the Tax Court. Instead, A pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the Area Director issues a notice of proposed claim disallowance. A requests and is granted Appeals office consideration. A convinces Appeals that A's claim is correct and Appeals allows A's claim. A may recover reasonable

administrative costs incurred on or after the date of the notice of proposed deficiency (30-day letter), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. A cannot recover costs incurred prior to the date of the 30-day letter because these costs were incurred before the administrative proceeding date.

Example 2. Taxpayer B files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a Notice Of Intent to Levy And Notice Of Your Right To A Hearing pursuant to sections 6330(a) and 6331(d). B timely requests and is granted a Collection Due Process (CDP) hearing. In connection with the CDP hearing, B enters into an installment agreement as a collection alternative. The costs that B incurred in connection with the CDP hearing were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, B may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

■ **Par. 6.** Section 301.7430–4 is amended by:

■ 1. Removing the language ''such'' the second time it appears in the second sentence and in the fifth sentence of paragraph (b)(2)(ii) and adding the language ''that'' in its place.

■ 2. Revising paragraphs (b)(3)(i) and (b)(3)(iii)(B).

■ 3. Revising the first sentence in paragraph (b)(3)(iii)(C) and adding a new second sentence following the first sentence.

■ 4. Redesignating paragraph (b)(3)(iii)(D) as paragraph (b)(3)(iii)(F), adding new paragraphs (b)(3)(iii)(D) and (b)(3)(iii)(E), and revising newly redesignated paragraph (b)(3)(iii)(F).

■ 5. Revising paragraph (c)(4).

■ 6. Adding paragraph (d).

The additions and revisions read as follows:

§ 301.7430–4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees incurred after January 18, 1999, and described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed $125 per hour (as adjusted for an increase in the cost of living and, if appropriate, a special factor adjustment).

* * * * *

(iii) * * *

(B) *Special factor.* A *special factor* is a factor, other than an increase in the cost of living, that justifies an increase in the $125 per hour limitation of section 7430(c)(1)(B)(iii). The undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purpose of increasing the $125 per hour limitation. By contrast, the limited availability of a specially qualified representative for the proceeding, the limited local availability of tax expertise, and the difficulty of the issues are special factors justifying an increase in the $125 per hour limitation.

(C) *Limited availability.* Limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the $125 per hour rate (as adjusted for an increase in the cost of living). The representative's special qualification must be based on nontax expertise. * * *

(D) *Limited local availability of tax expertise.* Limited local availability of tax expertise is established by demonstrating that a representative possessing tax expertise is not available in the taxpayer's geographical area. Initially, this showing may be made by submission of an affidavit signed by the taxpayer, or by the taxpayer's counsel, that no representative possessing tax expertise practices within a reasonable distance from the taxpayer's principal residence or principal office. The hourly rate charged by representatives in the geographical area is not relevant in determining whether tax expertise is locally available. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited local availability of a representative possessing tax expertise.

(E) *Difficulty of the issues.* In determining whether the difficulty of the issues justifies an increase in the $125 per hour limitation on the applicable hourly rate, the Internal Revenue Service will consider the following factors:

(*1*) The number of different provisions of law involved in each issue.

(*2*) The complexity of the particular provision or provisions of law involved in each issue.

(*3*) The number of factual issues present in the proceeding.

(*4*) The complexity of the factual issues present in the proceeding.

(F) *Example.* The provisions of this section are illustrated by the following example:

Example. Taxpayer A is represented by B, a CPA and attorney with a LL.M. Degree in Taxation with Highest Honors who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues that is subject to the provisions of this section. Assuming A qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the $125 per hour limitation (as adjusted for an increase in the cost of living), absent a special factor. B is not a specially qualified representative because extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor. A higher rate may be justified by another special factor, that is, the limited local availability of tax expertise or the difficulty of the issues.

* * * * *

(c) * * *

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. After incurring fees for representation during the Internal Revenue Service's examination of A's income tax return, A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred before the date of the mailing of the 30-day letter are not reasonable administrative costs because they were incurred before the administrative proceeding date. Similarly, A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs.

Example 2. Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, in addition to petitioning the Tax Court, A recontacts Appeals and A convinces Appeals that the information previously submitted during the review by Appeals is sufficient and, therefore, the notice of deficiency is incorrect and A owes no additional tax. The Internal Revenue Service and A agree to a stipulated decision in the Tax Court case to reflect Appeals' decision. The Tax Court enters the decision. If A seeks administrative costs, A may recover costs incurred after the date of the mailing of the 30-day letter, costs incurred in recontacting Appeals after the issuance of the notice of deficiency, and costs incurred up to the time the Tax Court petition was filed, as reasonable administrative costs, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. The costs incurred before the date of the mailing of the 30-day letter are not reasonable administrative costs because they were incurred before the administrative proceeding date, as set forth in § 301.7430–3(c)(1)(iii). A's costs incurred in connection with the filing of a petition with the Tax

Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as they are litigation costs.

(d) *Pro bono representation*—(1) *In general.* Fees recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may exceed the attorneys' fees paid or incurred by the prevailing party if such fees are less than the reasonable attorneys' fees because an individual is representing the prevailing party on a pro bono basis. In addition to attorneys' fees, reasonable costs incurred or paid by the individual providing the pro bono representation that are normally billed separately also may be recovered under this section. The Treasury Department and the Internal Revenue Service may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, provide for additional rules that apply for awards of costs for pro bono representation for purposes of this paragraph (d).

(2) *Requirements.* Pro bono representation is established by demonstrating—

(i) Representation was provided for no fee or for a fee that (taking into account all the facts and circumstances) constitutes a nominal fee;

(ii) The representative intended to provide representation for no fee or for a nominal fee from the commencement of the representation. Intent to provide representation for no fee or for a nominal fee may be demonstrated through documentation such as a retainer agreement. An individual will not be considered to have represented a client on a pro bono basis if the facts demonstrate that the individual anticipated a fee greater than a nominal fee or provided representation on a contingency fee basis. The fact that the representative intended to seek recovery of fees under section 7430 will not prevent the representative from satisfying this requirement.

(3) *Nominal fee.* A *nominal fee* is defined as a fee that is insignificantly small or minimal. A nominal fee is a trivial payment, bearing no relation to the value of the representation provided, taking into account all the facts and circumstances.

(4) *Payment when representation provided at no charge or for a nominal fee.* A prevailing party who receives representation at no charge or for a nominal fee and who satisfies the requirements under this section is eligible to receive reasonable fees in excess of the fees actually paid or incurred. Payment will be made to the representative or the representative's employer.

(5) *Recordkeeping.* Contemporaneous records must be maintained, demonstrating the work performed and the time allocated to each task. These records should contain similar information to billing records.

(6) *Examples.* The provisions of this section are illustrated by the following example:

Example 1. Taxpayer A, an attorney, files a petition with the Tax Court and pays a $60 filing fee. A appears pro se in the court proceeding. If A prevails, he will not be entitled to an award of reasonable litigation costs for his services. A is rendering services on his own behalf, not providing pro bono representation. His lost opportunity costs are not compensable under section 7430. A may recover the filing fee as a litigation cost, but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

■ **Par. 7.** Section 301.7430–5 is revised to read as follows:

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party (other than by reason of section 7430(c)(4)(E)) only if—

(1) At least one issue (other than recovery of administrative costs) remains in dispute as of the date that the Internal Revenue Service takes a position in the administrative proceeding, as described in paragraph (b) of this section;

(2) The position of the Internal Revenue Service was not substantially justified;

(3) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(4) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the earlier of—

(1) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(2) The date of the notice of deficiency or any date thereafter.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A pays the amount of the proposed deficiency and files a claim for refund. A's claim is considered and a notice of proposed claim disallowance is issued by the Area Director. A does not request an Appeals office conference and the Area Director issues a notice of claim disallowance. A then files suit in a United States District Court. A cannot recover reasonable administrative costs because the notice of claim disallowance is not a notice of the decision of the Internal Revenue Service Office of Appeals or a notice of deficiency. Accordingly, the Internal Revenue Service has not taken a position in the administrative proceeding pursuant to section 7430(c)(7)(B).

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B disputes the proposed adjustments and requests an Appeals office conference. The Appeals office determines that B has no additional tax liability. B requests administrative costs from the date of the 30-day letter. B is not the prevailing party and may not recover administrative costs because all of the proposed adjustments in the case were resolved as of the date that the Internal Revenue Service took a position in the administrative proceeding.

(d) *Substantially justified*—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Position in courts of appeal.* Whether the United States has won or lost an issue substantially similar to the one in the taxpayer's case in courts of appeal for circuits other than the one to which the taxpayer's case would be appealable should be taken into consideration in determining whether the Internal Revenue Service's position was substantially justified.

(3) *Example.* The provisions of this section (d) are illustrated by the following example:

Example. The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Internal Revenue Service issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient

information and arguments to convince a tax compliance officer that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time the costs were incurred.

(4) *Included costs.* (i) An award of reasonable administrative costs shall only include costs incurred on or after the administrative proceeding date as defined in section 301.7430–3(c) of this chapter.

(ii) If the Internal Revenue Service takes a position in an administrative proceeding, as defined in paragraph (b) of this section, and the position is not substantially justified, the taxpayer may be permitted to recover costs incurred before the position was taken, but not before the dates set forth in this paragraph (d)(4).

(5) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Pursuant to section 6672, taxpayer D receives from the Area Director Collection Operations (Collection) a proposed assessment of trust fund taxes (Trust Fund Recovery Penalty). D requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies D of this decision in writing. Collection then assesses the tax and notice and demand is made. D timely pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection disallows the claim, but Appeals, on reconsideration, reverses its original position, thus upholding D's position. If Appeals' initial determination was not substantially justified, D may recover administrative costs incurred on or after the mailing of the proposed assessment of trust fund taxes, because the proposed assessment is the first determination letter that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

Example 2. Taxpayer E receives a notice of proposed deficiency (30-day letter). E pays the amount of the proposed deficiency and files a claim for refund. E's claim is considered and a notice of proposed disallowance is issued by the Area Director. E requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. E does not file suit in a United States District Court but instead contacts the Appeals office to attempt to reverse the decision. E convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. E may recover reasonable administrative costs if the position taken in the notice of claim disallowance issued by the Office of Appeals was not substantially justified and the other requirements of section 7430 and the regulations thereunder are satisfied. If so, E may recover administrative costs incurred from the mailing date of the 30-day letter because the requirements of paragraph (c)(2) of this section are met. E cannot recover the costs incurred prior to the mailing of the 30-day letter because they were incurred before the administrative proceeding date.

(6) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(7) *Presumption.* If the Internal Revenue Service did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the Internal Revenue Service, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (d)(7), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, and announcements published in the Internal Revenue Bulletin and, if issued to or with respect to the taxpayer, private letter rulings, technical advice memoranda, and determination letters (§ 601.601(d)(2) of this chapter). Also, for purposes of this paragraph (d)(7), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430–3(c).

(e) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(f) *Most significant issue or set of issues presented.* (1) *In general.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitutes the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, it objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(2) *Example.* The provisions of this section may be illustrated by the following example:

Example. In the purchase of an ongoing business, Taxpayer F obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of F's individual income tax return for the year in which the business was acquired, the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by F. Both parties agree that the covenant not to compete is amortizable over a period of five years; however, the Internal Revenue Service asserts that the proper basis of the covenant is $25,000, while F asserts the basis is $50,000 and claims a deduction of $10,000 in the year in which the business was acquired. F deducted $12,000 for the seminar. The Internal Revenue Service determines that the deduction for the seminar should be

disallowed entirely. In the notice of deficiency, the Internal Revenue Service adjusts the amortization deduction to reflect the change to the basis of the covenant not to compete, and disallows the seminar expense. Thus, of the two adjustments determined for the year under audit, the adjustment attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. Due to the impact on the next succeeding four years, however, the covenant not to compete adjustment is the most significant issue to both F and the Internal Revenue Service.

(g) *Net worth and size limitations*—(1) *Individuals.* A taxpayer who is a natural person meets the net worth and size limitations of this paragraph if the taxpayer's net worth does not exceed two million dollars. For purposes of determining net worth, individuals filing a joint return, and jointly incurring administrative or litigation costs shall have their net worth determined jointly, with all assets and liabilities treated as joint for purposes of the net worth evaluation, and applying a joint cap of four million dollars. Individuals who file a joint return, but incur separate administrative or litigation costs, by retaining separate representation, and/or seeking individual administrative review or petitioning the court individually, such as under section 6015, shall have their net worth determined separately, with only those assets and liabilities reasonably attributable to each spouse considered against separate caps of two million dollars per spouse.

(2) *Estates and trusts.* An estate or a trust meets the net worth and size limitations of this paragraph if the estate or trust's net worth does not exceed two million dollars. The net worth of an estate shall be determined as of the date of the decedent's death provided the date of death is prior to the date the court proceeding is commenced. The net worth of a trust shall be determined as of the last day of the last taxable year involved in the proceeding.

(3) *Others.* (i) A taxpayer that is a partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (g)(4) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date:

(A) The taxpayer's net worth does not exceed seven million dollars; and

(B) The taxpayer does not have more than 500 employees.

(ii) A taxpayer who is a natural person and owns an unincorporated business is subject to the net worth and size limitations contained in paragraph (g)(3)(i) of this section if the tax at issue (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) relates directly to the business activities of the unincorporated business.

(4) *Special rule for charitable organizations and certain cooperatives.* An organization described in section 501(c)(3) exempt from taxation under section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(5) *Special rule for TEFRA partnership proceedings.* (i) In cases involving partnerships subject to the unified audit and litigation procedures of subchapter C of chapter 63 of the Internal Revenue Code (TEFRA partnership cases), the TEFRA partnership meets the net worth and size limitations requirements of this paragraph (g) if, on the administrative proceeding date—

(A) The partnership's net worth does not exceed seven million dollars; and

(B) The partnership does not have more than 500 employees.

(ii) In addition, each partner requesting fees pursuant to section 7430 must meet the appropriate net worth and size limitations set forth in paragraph (g)(1), (g)(2), or (g)(3) of this section. For example, if a partner is an individual, his or her net worth must not exceed two million dollars as of the administrative proceeding date. If the partner is a corporation, its net worth must not exceed seven million dollars and it must not have more than 500 employees.

(6) *Determining net worth.* For purposes of determining net worth under this paragraph (g), assets are valued based on the cost of their acquisition.

(h) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent an agreement, by the Internal Revenue Service. See § 301.7430–2(c)(7) regarding the right to appeal the decision of the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs to the Tax Court.

■ **Par. 8.** Section 301.7430–6 is revised to read as follows:

§ 301.7430–6 Effective/applicability dates.

Sections 301.7430–2 through 301.7430–6, other than §§ 301.7430–2(b)(2), (c)(3)(i)(B), (c)(3)(i)(E), (c)(3)(ii)(C), (c)(3)(iii)(C), (c)(5), (c)(7), and (e); §§ 301.7430–3(c)(1), (c)(3), (c)(4), and (d); §§ 301.7430–4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(iii)(E), (b)(3)(iii)(F), (c)(2)(ii), (c)(4), and (d); and §§ 301.7430–5(a), (b), (c)(3), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), (f)(2), (g)(1), (g)(2), (g)(3), (g)(5), and (g)(6) apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is applicable to costs incurred and services performed in cases in which the petition was filed on or after March 1, 2016, except for the last two sentences, which are applicable March 23, 1993. Sections 301.7430–2(b)(2), and (c)(3)(i)(B) (except the last sentence); 301.7430–4(b)(3)(ii), (b)(3)(iii)(C) (except the first two sentences), and (c)(2)(ii) (except for references to the statutory cap as $125); and 301.7430–5(a) (except the parenthetical of 5(a) and all of 5(a)(1)), and the first and last sentence of (d)(7) are applicable for administrative proceedings commenced after July 30, 1996. Sections 301.7430–1(e), 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998. The last sentence of § 301.7430–2(c)(3)(i)(B), the first two sentences of § 301.7430–2(b)(3)(iii)(C), §§ 301.7430–2(c)(3)(i)(E), (c)(3)(ii)(C), (c)(3)(iii)(C), (c)(7), (e); 301.7430–3(c)(1), (c)(3), (c)(4), (d); 301.7430–4(b)(3)(i), (b)(3)(iii)(B), (b)(3)(iii)(E), (b)(3)(iii)(F), (c)(2)(ii) (to the extent it references the statutory cap as $125), (c)(4), (d); the parenthetical of § 301.7430–5(a) and §§ 301.7430–5(a)(1), (b), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), except the first and last sentences, (f)(2), (g)(1), (g)(2), (g)(3), (g)(5), and (g)(6) apply to costs incurred and services performed in cases in which the petition was filed on or after March 1, 2016.

■ **Par. 9.** Section 301.7430–7 is amended by:

■ 1. Adding paragraph (c)(8).

■ 2. Amending paragraph (e) by adding *Examples 16* and *17.*

■ 3. Revising paragraph (f).

The additions and revisions read as follows:

§ 301.7430–7 Qualified offers.

* * * * *

(c) * * *

(8) *Interest as a contested issue.* To constitute a qualified offer, an offer must specify the offered amount of the taxpayer's liability (determined without

regard to interest, unless interest is a contested issue in the proceeding), as provided in paragraphs (c)(1)(ii) and (c)(3) of this section. Therefore, a qualified offer generally may only include an offer to compromise tax, penalties, additions to the tax, and additional amounts. Interest may only be included in a qualified offer if interest is a contested issue in the proceeding. For purposes of this section, interest is a contested issue in the proceeding only if the court in which the proceeding could be brought would have jurisdiction to determine the amount of interest due on the underlying tax, penalties, additions to the tax, and additional amounts. Examples of proceedings in which interest might be a contested issue include proceedings in which the increased interest rate for large corporate underpayments under section 6621(c) is imposed by the Internal Revenue Service and interest abatement proceedings brought under section 6404. Interest is not a contested issue in the proceeding if the court that would have jurisdiction over the proceeding would not have jurisdiction to determine the amount or rate of interest, regardless of whether the taxpayer attempts to raise interest as an issue in the proceeding. Consequently, interest will not be a contested issue in the vast majority of tax cases because they merely involve the straightforward application of statutory interest under section 6601. Accordingly, in those cases, interest may not be included in the offer.

* * * * *

(e) * * *

Example 16. Qualified offer may not compromise interest unless it is a contested issue. Taxpayer J receives a notice of deficiency making an adjustment resulting in a deficiency in tax of $6,500 plus a penalty of $500. Interest is not a contested issue in the proceeding. Within the qualified offer period, J submits a written offer to settle the case for a deficiency of $1,000, including all taxes, penalties, and interest. The offer states that it is a qualified offer for purposes of section 7430(g) and that it will remain open for acceptance by the Internal Revenue Service for a period of 90 days. Section 7430(g)(2)(B) and paragraph (c)(3) of this section state that the amount of a qualified offer must be without regard to interest unless interest is at issue in the proceeding. Since J's offer attempts to compromise interest, which is not a contested issue in the proceeding, it is not a qualified offer.

Example 17. Qualified offer based on new defense or legal theory. Taxpayers K and L received a statutory notice of deficiency for tax year 2005, a tax year when they were married and filed a joint income tax return. Taxpayer K files a separate petition claiming innocent spouse relief and simultaneously submits an offer purporting to be a qualified offer. The offer states that K is entitled to innocent spouse relief and offers to settle the 2005 deficiency as to K. K's innocent spouse claim was not raised during K and L's audit, nor was it raised during their appeals conference. Additionally, at no time prior to or contemporaneously with submitting the offer did K file with the Internal Revenue Service a Form 8857, Request for Innocent Spouse Relief, or otherwise provide the information specified in § 1.6015–5(a) of this chapter. K's offer is not a qualified offer because K did not file a Form 8857 or otherwise provide substantiation or legal and factual arguments necessary to allow for informed consideration of the merits of the innocent spouse claim as required by paragraph (c)(4) of this section, contemporaneously with the offer or prior to making the offer.

(f) *Effective/applicability date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003, except that paragraph (c)(8) is effective as of *March 1, 2016.*

§§ 301.7430–1, 301.7430–2, 301.7430–4, and 301.7430–5 [Amended]

■ **Par. 10.** For each section listed in the table, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
§ 301.7430–1(f)(2)(i)	district director	Internal Revenue Service office
§ 301.7430–1(f)(3)(ii)	district director	Internal Revenue Service office
§ 301.7430–1(f)(3)(iii)	district director	Internal Revenue Service office
§ 301.7430–1(f)(4)(i)	district director	Internal Revenue Service office
§ 301.7430–1(g) *Example 6* third and fourth sentences	district director	Internal Revenue Service office
§ 301.7430–1(g) *Example 7* third and fourth sentences	district director	Internal Revenue Service office
§ 301.7430–1(g) *Example 8* second and fourth sentences	district director	Internal Revenue Service office
§ 301.7430–1(g) *Example 9* second sentence	such	these
§ 301.7430–2(b)(2) fourth and fifth sentences	such	these
§ 301.7430–2(c)(4) first sentence	which	that
§ 301.7430–2(c)(6) second sentence	such	the
§ 301.7430–4(b)(3)(ii) first and second sentences	$110	$125
§ 301.7430–4(c)(2)(i) third sentence	Such	These
§ 301.7430–4(c)(2)(i) fourth sentence	which	that
§ 301.7430–4(c)(2)(ii) second and third sentences	$110	$125
§ 301.7430–5(h) first sentence	such	an

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: January 19, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–04401 Filed 2–29–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 1900 to § 1910.999, revised as of July 1, 2015, on page 243, in § 1910.106, paragraph (a)(14) introductory text is reinstated to read as follows:

§ 1910.106 Flammable liquids.

* * * * *

(14) *Flashpoint* means the minimum temperature at which a liquid gives off vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the

liquid, and shall be determined as follows:

* * * * *

[FR Doc. 2016–04434 Filed 2–29–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 104

[Docket ID: DOD–2013–OS–0091]

RIN 0790–AJ00

Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish policy, assign responsibilities, and promulgate procedures for informing current and former uniformed Service members of the Department of Defense (DoD) and individuals who apply for uniformed service with DoD of their rights, benefits, and obligations under USERRA and its implementing regulations. This rule does not apply to Service members who have served or applied to serve with the National Disaster Medical Response System or with the Commissioned Corps of the Public Health Service. Additionally, the rule establishes procedures for DOD components' responsibilities related to fulfilling their USERRA obligations.

DATES: This rule is effective on March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Curtis Bell, 571–372–0695.

SUPPLEMENTARY INFORMATION: This final rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

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I. Authority

This action is authorized by 38 U.S.C. 4312(b) and 38 U.S.C. 4333.

II. Executive Summary

A. Purpose

The purpose of this part is to establish policy, assign responsibilities, and promulgate procedures for informing current and former uniformed Service members of the Department of Defense (DoD) and individuals who apply for uniformed service with DoD of their rights, benefits, and obligations under USERRA and its implementing regulations at 20 CFR part 1002 (applicable to States, local governments, and private employers) and 5 CFR part 353 (applicable to the Federal Government). This part does not apply to Service members who have served or applied to serve with the National Disaster Medical Response System or with the Commissioned Corps of the Public Health Service. Additionally, the rule establishes procedures for DoD components' responsibilities related to fulfilling their USERRA obligations.

B. Legal Authority

38 U.S.C. chapter 43, specifically to 38 U.S.C. 4312(b) and 38 U.S.C. 4333.

The purposes of this chapter are:

(1) To encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

C. Summary of the Major Provisions of the Regulatory Action in Question

This regulatory action:

a. Establishes procedures to maintain oversight of an effective program to ensure that uniformed Service members, former Service members, and individuals who apply for uniformed service with DoD are aware of their rights, benefits, and obligations under USERRA.

b. Describes policies that serve to inform uniformed Service members, former Service members, and individuals who apply for uniformed service with DoD of their rights under USERRA.

D. Costs and Benefits

The average cost of $2,475 for Federal agencies such as DOL and the Office of Special Counsel (OSC) to formally investigate has saved the Federal government over $6.9 million dollars annually (GAO Highlights 15–77, November 2014). ESGR operates and maintains a Customer Service Center (CSC) that acts as the initial entry point for USERRA complaints, inquiries, and information requests. The CSC provides prompt, expert telephonic and email responses to Service members and employers on all USERRA related matters. During Fiscal Years 2012, 2013 and 2014 (FY (12, 13 and 14)), ESGR received 21,521; 19,938; 16,089 contacts by telephone and email, respectively. Of those contacts, 2,793 in FY 12; 2,544 in FY 13; and 2,374 in FY 14 resulted in actual USERRA cases for mediation purposes. ESGR mediators are unpaid volunteers whose services are accepted pursuant to 10 U.S.C. 1588. As such, the only cost to the general public is general administrative expenses in managing the mediation program. The approximate cost of $3000 is the estimated cost for the DOL to investigate formal complaints if ESGR's mediation program was not in place. The benefits of using ESGR services are Service members receive a timely response without additional cost.

E. Background

This rule is designed to provide information about the USERRA consistent with its implementing regulations at 20 CFR part 1002 and 5 CFR part 353 to DoD Service members, former Service members, individuals who apply, and their employers, and about an informal mediation program run by the Employer Support of the Guard and Reserve (ESGR). Additionally, the rule establishes procedures for DOD components' responsibilities related to fulfilling their USERRA obligations.

ESGR is a DoD operational agency whose mission is to gain and maintain employer support for Guard and Reserve service by advocating relevant initiatives, recognizing outstanding support, increasing awareness of the law, and resolving conflict between

employers and Service members. As such, ESGR is the principal agency within DoD dedicated to providing its customers and stakeholders with an awareness about USERRA.

ESGR has provided outreach and USERRA assistance to Reserve Component (RC) Service members and their employers since its inception in 1972. Hundreds of thousands of RC Service members and employers have benefited from ESGR services. Considering the National Guard and Reserve forces make up nearly 50 percent of our military strength, and ongoing global operations and humanitarian response, civilian employers' support is critical to our National Defense now more than ever.

The Ombudsman Services Program provides education, information, and neutral third-party mediation services in order to resolve employee/employer USERRA conflicts. ESGR is not an enforcement agency and does not participate in formal litigation processes.

ESGR signed an updated Memorandum of Understanding (MOU) in 2010 with the Department of Labor that continued organizational cooperation and improved services provided to all customers regarding USERRA compliance. More than 650 volunteer ombudsmen help to resolve USERRA compliance issues throughout the Nation.

More than 4,900 volunteers support ESGR's mission and serve on ESGR State Committees maintaining employer support programs, providing informative briefings and mediation, and recognizing employers who go above and beyond in their dedication to employees who pledge to be both a citizen and protector of our Nation. Since ESGR's creation four decades ago, thousands of employers have been honored for their commitment to stand beside those who serve. As the use of our military evolves, many Guard and Reserve members will return from present-day conflicts, changing out of their boots and reintegrating into life at home. ESGR is committed to continue assisting the returning Service members by ensuring America's heroes have meaningful civilian employment when they come home. The benefit is that ESGR relieves DOL of the extra cases that may be filed by providing information which the inquirer can decide whether to pursue further action with the DOL.

III. Background

The Department of Defense (hereinafter the ''Department'' or ''DoD'') published a proposed rule in the **Federal Register** on July 28, 2014 (79 FR 43700–43704). The public comment period for the proposed rule ended on September 26, 2014. Fourteen comments were received. This preamble addresses the comments and the Department's responses.

IV. Summary of Significant Changes to the Final Rule

This section contains the Department's responses to the comments received on the proposed rule.

A. Purpose

Comment: One comment stated the Department does not have the authority under 38 U.S.C. chapter 43, but instead assigned duties are listed in 38 U.S.C. 4312(b) and 38 U.S.C. 4333. 38 U.S.C. 4312(b) provides the determination of ''military necessity'' sufficient to excuse an employee from giving advance notice of uniformed service to his or her employer ''shall be made pursuant to regulations prescribed by the Secretary of Defense.'' 38 U.S.C. 4333 directs the Secretary of Defense to take such actions as the Secretary deems appropriate to inform Service members and employers of the rights, benefits, and obligations under USERRA.

Response: The Department has clarified in the preamble that the authority for this rulemaking stems from two statutory provisions of USERRA—38 U.S.C. 4312(b) and 38 U.S.C. 4333, which state the Secretary of Defense may take such actions as the Secretary deems appropriate for informing Service members and employers of their rights and obligations under USERRA. In addition, the Department has revised the Authority citation in the table of contents of the rule to reflect these provisions.

B. Definitions

Comment: One comment requested the authority for determining what constitutes a critical mission and critical requirement be at the Assistant Secretary level.

Response: The Department stated in the final rule that authority for determining what constitutes a critical mission or requirement will not be delegated below the Assistant Secretary level.

Comment: One commenter suggested the two definitions be amended to include a reference to § 104.6(a)(2)(iv)(C)(*1*) where the proposed rule stated that the responsible party must be at the Assistant Secretary's or higher level official.

Response: The Department stated in the final rule that authority for determining what constitutes a critical mission or requirement will not be delegated below the Assistant Secretary level, no additional reference is necessary.

Comment: One comment requested deletion of ''impossible or unreasonable'' when giving advance notice of uniformed service.

Response: The Department recognized that 38 U.S.C. 4312(b) defined ''impossible or unreasonable'' and has removed the definition of ''impossible or unreasonable'' from the final rule.

Comment: One commenter addressed the use of ''non-career service'' which should be deleted based on the one-time use of it. The commenter added that the term is shorthand for service that does not exceed the Act's five-year limit.

Response: The Department concurred with the removal of ''non-career service.'' USERRA protections are not limited to non-career Service members. The commenters correctly pointed out that 38 U.S.C. 4301(a) protects both non-career and career Service members.

C. Policy

Comment: One commenter stated that policy of § 104.4 is ''to support non-career uniformed service by taking appropriate actions to . . . assist uniformed Service members.'' Continuous or repeated active service that results in eligibility for a regular retirement from the Armed Forces is not considered ''non-career service'' according to the definition in § 104.3. By implication, does this mean that the DoD will not offer its assistive services, such as Employer Support of the Guard and Reserve (ESGR), to Service members who voluntarily commit to service beyond their initial obligation? The commenter requested clarification of what ways, specifically, does the DoD intend its regulations to be limited to the support of ''non-career uniformed service.''

Response: The Department concurs with the commenter's concerns and has since removed the definition of non-career service and relies instead on the definition of uniformed services in 38 U.S.C. 4303(16) and the statutory requirements for reemployment at 38 U.S.C. 4312 for purposes of determining an individual's eligibility to receive DoD's assistive services. The Department offers its services to all Service Members, Former Service Members and Applicants of the Uniformed Services. The commenter must refer to 38 U.S.C. 4312 and corresponding DOL regulations for the applicability of USERRA. The

reemployment rights provision of USERRA, is applicable to uniformed members whose cumulative years of military service do not exceed five years with one employer. To help clarify, it may be of assistance to direct the commenter to the preamble to the DOL regulations of USERRA, which explains, ''Section 1002.101 clarifies that the five-year period pertains only to the cumulative period of uniformed service by the employee with respect to one particular employer, and does not include periods of service during which the individual was employed by a different employer. Therefore, the employee is entitled to be absent from employment with a particular employer because of service in the uniformed services for up to five years and still retain reemployment rights with that employer; this period starts anew with each new employer.'' (70 FR 75246–75313, December 19, 2005). The commenter mentioned the term ''double dippers.'' USERRA protections with regard to reemployment are not applicable to situations where cumulative service exceeds five years with one employer. The Military Department Secretaries determine which orders are exempt from the five-year service limits.

D. Procedures

Comment: A commenter addressed advance notice concerns stating the proposed rule did not address the fact that an appropriate officer of the uniformed service concerned may provide the notice.

Response: The Department stated in the final rule that an employee or an appropriate officer of the uniformed services may provide the advance notice. See § 104.6(a)(2)(iii)(A)(*3*)(*i*).

Comment: A commenter stated wording in § 104.6(a)(2)(iii)(A)(*3*) may be confusing and open the door to contradictory interpretations of the employee's obligation to provide advance notice of military service. The first sentence of § 104.6(a)(2)(iii)(A)(*3*) states that the advance notice ''should be provided as early as possible'' and recommends the advance notice be provided ''at least 30 days prior to departure for service.'' That language is consistent with the current 32 CFR 104.6(a)(2)(i)(B) provision which states that the advance notice ''should be provided as early as practicable.'' But the second sentence of the proposed § 104.6(a)(2)(iii)(A)(*3*) seemingly adds a qualifier to the ''as early as possible'' policy by inserting new language linking the time frame for providing the advance notice to ''the time the Service member receives confirmation of upcoming uniformed service duty'' (emphasis added). The commenter was concerned that this addition of confirmation of service orders will actually result in reduced periods of advance notice, because some Service members may interpret this as suggesting they withhold notice until they receive a second set of orders confirming the initial set of orders. The employer's past experience is that most individual Service members will get notification from the unit that he/she will be tasked for an upcoming mission sometimes weeks or even months in advance, although the mission won't get funded and/or orders cut until a point very near the time of the mission. If the Service member waited until final orders are cut to give notification to the employer, the employer wouldn't learn about an individual's planned departure on military leave until very near the actual departure time. That runs contrary to the ''as early as possible'' goal.

Response: The Department has recommended a minimum of 30 days to trigger notice prior to departure. A Service member cannot be certain of the departure date, which is an objective point in time, until he/she receives confirmation of military duty. Nothing in this section prohibits a Service member from providing advance notice when he or she first learns that he or she might perform future military duty. The commenter was concerned that this guidance could reduce advance notification. The Department has revised the regulatory text to make clear that this provision is a recommendation only and not mandatory.

Comment: One of the commenters stated a notice of ''at least 30 days prior to departure for uniformed service when feasible'' conflicts with USERRA. The commenter further added that an employee's failure to provide such a notice may result in prejudice. An employer might view the regulatory recommendation as a gauge to apply in evaluating the employee. For instance, an employee might receive a negative performance review and consequent loss of a raise for not meeting the Department's recommended notice standard.

Response: The Department's recommendation in § 104.6(a)(2)(iii)(A)(*3*) that employees provide at least 30 days advance notice to their employer is just that: a recommendation. Whenever an employee is questioned as to whether they provided advance notice, they should show that they met the requirement. The Department's 30-day recommendation is not dispositive, but can be used as a benchmark for analyzing whether advance notice was provided on a case-by-case basis. The recommendation does not improperly regulate any mandated standard. It is true that Service members and employers may look to the benchmark as a reasonable standard, but it does not preclude them from considering extenuated circumstances.

Comment: The commenter recommended a correction to clarify the duration of a period of service rather than a length of a Service member's absence as it relates to providing documentation to an employer. Because only a period of uniformed service of more than 30 days can trigger an obligation for a returning employee to submit certain service-related documentation to his or her employer upon request, § 104.6(a)(2)(iii)(B)(*2*) needs to be clarified to so reflect. Rather than measuring just the length of the period of service, the proposed rule erroneously measures the length of the entire ''absence from civilian employment due to military service.''

Response: The Department concurred and modified § 104.6(a)(2)(iii)(B)(*2*) for clarification to specify the period of military service instead of absence from civilian employment. The change clarifies and is consistent with the statute and DOL regulation.

Comment: Two commenters objected to imposing on Service members' obligations concerning civilian employment not authorized by USERRA. Obliging all returning Service members to give their employers ''documentation of absence due to uniformed service,'' § 104.6(a)(2)(iii)(B)(*2*)(*i*), as the Department has acknowledged, exceeds USERRA's requirements. Section 4312(f)(1) of USERRA requires employees returning from service periods exceeding 30 days to furnish employers upon request documentation showing that their application for reemployment is timely; that they have not exceeded the five-year service limit; and that their separation or dismissal from service was not under disqualifying conditions. Proposed § 104.6(a)(2)(iii)(B)(*2*)(*i*) directly conflicts with Section 4312(f)(l) of USERRA. It is inconsistent with Section 4312(f)(1) of USERRA because it would apply to Service members returning from a period of service shorter than 31 days; it would apply in the absence of any employer request for documentation.

Response: The Department concurs and has adjusted language in the final rule to state ''As a matter of policy the Military Departments strongly

recommend Commanders and Service members provide verification of uniformed service absence to civilian employers regardless of the duration of service upon request.'' Failure of an employee to comply with this policy requirement, does not affect the legal responsibilities of the employer under USERRA including prompt reemployment. DOL is the regulating party that can implement the statute in a way that impacts employers. The proposed rule at § 104.6(a)(2)(iii)(B)(*2*)(*i*) stated that it ''is not intended to, and should not, affect the legal responsibilities of the employer. . .''

Comment: Two commenters stated the proposed § 104.6(a)(2)(iii)(C) erroneously states that USERRA's five-year cumulative service limit is computed on the basis of ''absences from each place of civilian employment, due to uniformed service.'' The five-year cumulative limit is instead determined on the basis of duration of non-exempt period of service in a uniformed service performed during an employment relationship.

Response: The Department concurred and adjusted the five-year cumulative service limit for clarification. USERRA imposes a five-year cumulative limit on the absences from each place of civilian employment, due to uniformed service, except that any such period of service shall not include any service excluded pursuant to 38 U.S.C. 4312(c).

Comment: Two commenters objected to § 104.6(b)(3) to the extent it requires that the military departments accede to civilian employers' unilaterally made requests to adjust Reserve and National Guard members' ''absences from civilian employment due to uniformed service.'' USERRA is designed to encourage voluntary service in the Reserves and National Guard. See 38 U.S.C. 4301(a). So long as an employee has not exceeded the five-year service limit, USERRA places no restriction on the timing, frequency, duration, or nature of the employee's service in the uniformed services. 38 U.S.C. 4312(h). Nor does the Act grant a civilian employer any right to impose such a restriction. In fact, an employer acts unlawfully if it denies an employee permission to leave to perform military service, 20 CFR 1002.87. Allowing the military departments to change Service members' military schedules when unilaterally asked to do so by civilian employers may discourage the voluntarism that USERRA seeks to achieve. USERRA preserves the freedom of employees to volunteer to perform military service when they choose. Interference by employers in the scheduling of employees' military service would remove that freedom and potentially discourage employees from volunteering to perform military service. Such deleterious consequences could be avoided by requiring that a military department obtain a Service member' s consent prior to granting a request of the Service member's civilian employer to change the Service member's schedule.

Response: The Department concurred and adjusted § 104.6(b)(3) so that the Reserve Component representatives will consider requests from civilian employers of National Guard and Reserve members and adjust a Service member's absences when it serves the best interest of the military and is reasonable to do so. The change is now consistent with 20 CFR 1002.104.

Comment: One commenter addressed reemployment timeline requirements. The commenter requests reconsideration of the timelines for reemployment. The commenter states the period of military service disrupts personal time with family and getting back to a sense of normalcy takes time.

Response: The Department does not control or make policy on reemployment timelines. The DOL regulates the reemployment timelines and evaluates each reemployment situation on a case-by-case basis due to the Service member's unique circumstances. USERRA at 38 U.S.C. § 4312, provides that a Service member who served less than 31 days, as the employee, must report back to the employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence. In accordance with DOL regulation at 20 CFR § 1002.115, for a period of service between 31 days and less than 181 days, he or she must submit an application for reemployment (written or verbal) with the employer not later than 14 days after completing service. If the employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or verbal) not later than 90 days after completing service. See 20 CFR 1002.115 and 1002.181 for additional information.

V. Administrative Requirements

Regulatory Procedures

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

DoD consulted with the Office of Management and Budget (OMB) and determined this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and was subject to OMB review.

B. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

C. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

We certify this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

D. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This final rule does not create any new or affect any existing collections, and therefore, does not require OMB approval under the Paperwork Reduction Act of 1995.

E. Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 104

Government employees, Military personnel.

Accordingly 32 CFR part 104 is revised to read as follows:

PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS FOR SERVICE MEMBERS, FORMER SERVICE MEMBERS AND APPLICANTS OF THE UNIFORMED SERVICES

Sec.
104.1 Purpose.
104.2 Applicability.
104.3 Definitions.
104.4 Policy.
104.5 Responsibilities.
104.6 Procedures.

Authority: 38 U.S.C. chapter 43, specifically 38 U.S.C. 4312(b) and 38 U.S.C. 4333.

§ 104.1 Purpose.

The purpose of this part is to establish policy, assign responsibilities, and promulgate procedures for informing current and former uniformed Service members of the Department of Defense (DoD) and individuals who apply for uniformed service with DoD of their rights, benefits, and obligations under USERRA and its implementing regulations at 20 CFR part 1002 (applicable to States, local governments, and private employers) and 5 CFR part 353 (applicable to the Federal Government). Additionally, this part establishes procedures for DOD components' responsibilities related to fulfilling their USERRA obligations

§ 104.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components''). This part does not apply to the National Disaster Medical Response System or with the Commissioned Corps of the Public Health Service.

§ 104.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part.

Critical mission. An operational mission that requires the skills or resources available in a Reserve Component or components.

Critical requirement. A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission and operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within his or her Reserve Component.

Military necessity. For the purpose of determining when providing advance notice of uniformed service is not required, a mission, operation, exercise, or requirement that is classified, or a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge is sufficient justification for not providing advance notice to an employer.

Officer. For determining those Service officials authorized to provide advance notice to a civilian employer of pending uniformed service by a Service member or an individual who has applied for uniformed service, an officer will include all commissioned officers, warrant officers, and non-commissioned officers authorized by the Secretary concerned to act in this capacity.

Uniformed services. The Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, and any other category of persons designated by the President in time of war or National emergency. (See 38 U.S.C. chapter 4303.) The National Disaster Medical Response System and the Commissioned Corps of the Public Health Service are not governed by this Rule and are therefore excluded from its definition of uniformed services. However, their Service members and applicable employees remain protected under Title 38 U.S.C. Chapter 43 and its definition of Uniformed Services.

§ 104.4 Policy.

It is DoD policy to support uniformed service by taking appropriate actions to inform and assist uniformed Service members and former Service members and individuals who apply for uniformed service of their rights, benefits, and obligations in accordance with 38 U.S.C. chapter 43.

§ 104.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) In addition to the responsibilities in paragraph (d) of this section, the USD(P&R) has overall responsibility for DoD policy pertaining to total force management in accordance with DoD Directive 5124.02.

(2) Develops and oversees the implementation of DoD policy pertaining to civilian employment and reemployment rights, benefits, and obligations.

(b) Under the authority, direction, and control of USD(P&R), the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), with input from the Department of Labor's Veterans Employment and Training Service (DOL–VETS) and the Office of Personnel Management (OPM), advises the USD(P&R) on policies and procedures to promote and inform uniformed Service members and employers on civilian employment and reemployment rights, benefits and obligations in accordance with USERRA.

(c) Under the authority, direction, and control of the USD(P&R), the Director, Department of Defense Human Resources Activity (DoDHRA), oversees the Employer Support of the Guard and Reserve (ESGR).

(d) The OSD and DoD Component heads develop and implement procedures within their respective Components that are appropriate and in accordance with public law and DoD policy pertaining to providing information to persons entitled to rights, benefits, and obligations afforded under USERRA at 38 U.S.C. Chapter 43.

§ 104.6 Procedures.

(a) *Service Member Information and Assistance.* (1) The Heads of the DoD Components and the Commandant of the Coast Guard will:

(i) Inform the personnel in paragraph (a)(1)(i)(A) and (B) of this section of their general employment and reemployment rights, benefits, and obligations as described in USERRA.

(A) Civilian employees who apply for uniformed service.

(B) Civilian employees who are current members of the uniformed services who perform or participate on a voluntary or involuntary basis in active duty, inactive duty, or full-time National Guard duty.

(ii) Provide subject-matter experts to serve as points of contact (POCs) to assist applicants for and members of the uniformed service in matters related to employment and reemployment rights, benefits, and obligations.

(iii) Provide initial and annual refresher training for all Human Resources officials, supervisors, employees, and uniformed Service members.

(2) The Secretaries of the Military Departments and the Commandant of the Coast Guard will:

(i) Provide an annual review of USERRA information to employees of the uniformed services.

(ii) Upon completion of a period of active duty extending beyond 30 days, and before separation from active duty, advise Active and Reserve Component Service members covered by USERRA of their employment and reemployment rights, benefits, and obligations as provided under USERRA.

(iii) Advise members of the uniformed services that as employees they must fulfill certain obligations in order to achieve eligibility for reemployment rights as specified in USERRA. At a minimum, advice given will include the following USERRA notification and reporting requirements for returning to civilian employment:

(A) *Advance Notification of Military Service.* To be eligible for reemployment rights as specified in USERRA, employees must provide advance notice of absence due to uniformed service to their civilian employers except when giving such notice is prevented by military necessity, or otherwise impossible or unreasonable under all the circumstances.

(*1*) DoD recommends persons applying for and/or performing uniformed service to provide advance notice in writing to their civilian employers of pending absence.

(*2*) Although oral notice is allowed pursuant to USERRA, written notice of pending uniformed service provides documentary evidence that this basic prerequisite to retaining reemployment rights was fulfilled by the Service member and serves to avoid unnecessary disputes.

(*3*) Regardless of the means of providing advance notice, whether oral or written, it should be provided as early as possible. The DoD recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when feasible, based upon the time the Service member receives confirmation of upcoming uniformed service duty. While the notice may be informal and does not need to follow any particular format, some acceptable methods of providing notice include:

(*i*) Giving notice on behalf of the employee by an appropriate officer in the uniformed Service member's chain of command. Written notice is preferred.

(*ii*) Providing the employer a copy of the unit's annual training schedule for the duty served on those dates, or by providing the employer in advance with a signed standardized letter with blanks in which the Service member has filled in the appropriate military duty dates.

(*iii*) Providing advance notification letters. Sample letters are provided by the ESGR, DoD's primary office for all matters concerning employer support of the National Guard and Reserve. ESGR information is provided in § 104.6(c) of this part.

(B) *Reemployment Reporting Requirements.* As described in USERRA, when notifying employers of their intent to return to work after completing uniformed service, employees must meet specific time-lines. Depending on the length of service, these time-lines span from less than 24 hours up to 90 days after completing uniformed service.

(*1*) Sample return notification letters are provided by ESGR.

(*2*) When the period of service exceeds 30 days from civilian employment, the Service member is required to provide documentation of service performed if requested by the employer.

(*i*) As a matter of policy the Military Departments strongly recommend Commanders and Service members provide verification of uniformed service absence to civilian employers regardless of the duration of service upon request. Failure of an employee to comply with this recommendation, does not, affect the legal responsibilities of the employer under USERRA including prompt reemployment.

(*ii*) Types of documentation satisfying this requirement are detailed in 20 CFR part 1002.

(C) *Five-Year Service Limit.* USERRA imposes a five-year cumulative limit on the absences from each place of civilian employment, due to uniformed service, except that any such period of service shall not include any service excluded pursuant to 38 U.S.C. 4312(c).

(D) *Character of Service.* Service members must not have been separated from service under a disqualifying discharge.

(iv) Determine and certify in writing, periods of service exempt from USERRA's five-year cumulative limit. Established exempt periods must be reviewed and recertified via policy memorandum, at a minimum, every two years. Failure to comply with this administrative requirement does not affect the continued validity of exempt periods certified in a writing that is more than two years old.

(A) Determine and certify in writing those additional training requirements not already exempt from USERRA five-year cumulative service limit, that are necessary for the professional development or skill training or retraining for members of the National Guard or Reserve. When the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from USERRA five-year cumulative service limit.

(B) Determine and certify in writing those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency officially declared by the President or Congress. Such orders with the purpose of direct or indirect support of the war or national emergency will be annotated accordingly since these periods of service are exempt from USERRA five-year cumulative service limit.

(C) Determine, and certify in writing, those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt from USERRA five-year cumulative service limit.

(*1*) The authority for determining what constitutes a critical mission or requirement will not be delegated below the Assistant Secretary level. The designation of a critical requirement to gain the necessary experience to qualify for specific key senior leadership positions will be used judiciously, and the necessary experience and projected key leadership positions fully documented in the determination and certification.

(*2*) This authority must not be used to grant exemptions to avoid USERRA five-year cumulative service limit or to extend individuals in repeated statutory tours.

(v) Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement, and reflect USERRA five-year cumulative exemption status as appropriate.

(A) Order modifications will be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change. Order modifications will be completed, as required, to reflect qualifying five-year exemption, as applicable; or an official Statement of Service must be generated, indicating original qualifying orders as exempt under proper authority, and retained in the Service member's personnel file.

(B) Orders must indicate exemption under USERRA from the five-year cumulative service limit on uniformed service absence from employment, when applicable. Specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from USERRA five-year cumulative service limit. Orders

qualifying for exemption should include a status reflecting the exemption status and authority.

(vi) Document the length of a Service member's initial period of military service obligation performed on active duty.

(vii) Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable.

(viii) Designate those officers who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service.

(ix) Provide documentation, upon request from a Service member or former Service member that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:

(A) The inclusive dates of the initial period of military service obligation performed on active duty.

(B) Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty through no fault of the Service member.

(C) The cumulative length of all periods of active duty performed.

(D) The authority under which a Service member was ordered to active duty when such service was exempt from USERRA five-year cumulative service limit.

(E) The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training, or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.

(F) A statement indicating service requirements prevented providing a civilian employer with advance notification of pending service, when applicable.

(G) Proof that the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in section 4304 of USERRA.

(H) A statement that sufficient documentation verifying a particular period of service, does not exist, when appropriate.

(x) Establish a central point of contact (POC) at each Reserve Component headquarters or Reserve regional command and each National Guard State headquarters who can render assistance to:

(A) Members of the National Guard or Reserve about employment and reemployment rights, benefits, and obligations.

(B) Employers of National Guard and Reserve members about duty or training requirements arising from a member's uniformed service or service obligation.

(xi) Inform Reserve Component Service members of services provided by ESGR. ESGR's subject-matter expert POCs can render assistance with issues regarding employment and reemployment rights, benefits, and obligations under USERRA. More information about ESGR is contained in paragraph (c) of this section.

(b) *Employer Information and Assistance.* The Military Departments will:

(1) Provide verification of absence due to uniformed service to civilian employers upon request regardless of the duration of service-related absence.

(2) Provide verification of discharge status upon employer request.

(3) Designate a Reserve Component representative who must be either a Commander or Officer in Charge with the military authority to delay, defer, cancel, or reschedule military service. The designated Reserve Component representative will consider, unless prevented by military necessity or otherwise impossible or unreasonable under all the circumstances, written requests from civilian employers of National Guard and Reserve members to adjust the Service member's absences from civilian employment. The civilian employer must submit a written justification explaining how the National Guard and Reserve member's absence imposes adverse financial or severe operating impact to the civilian employer, and advise as to when the hardship due to the Service member's absence is anticipated to end. The designated representative has discretion to delay, defer, cancel, or rescheduled military service, so long as it does not negatively affect military operations. The designated representative may make arrangements, other than adjusting the period of absence, to accommodate such requests when it serves in the best interest of the military and is reasonable to do so. Section 104.6(b)(3) does not create any right of action against the government by any party.

(c) *Agencies Providing USERRA Assistance*—(1) *ESGR.* ESGR is a component of the DoDHRA, a DoD Field Activity under the authority, direction, and control of the USD(P&R).

(i) ESGR is the primary DoD office for all matters concerning employer support of the National Guard and Reserve, and serves as the lead proponent for USERRA matters within DoD.

(ii) ESGR informs Service members and their civilian employers regarding their rights and responsibilities governed by USERRA.

(iii) ESGR does not have enforcement authority for USERRA, but serves as a free resource for Service members and employers.

(iv) ESGR's trained ombudsmen provide neutral, informal alternative dispute mediation services between Service members and employers for issues relating to compliance with USERRA. Headquarters ESGR Ombudsman Services representatives can be contacted by calling 1–800–336–4590.

(v) ESGR's Web site (available at *http://www.esgr.mil*) provides local and State contact information. Additionally, the Web site provides links to multiple resources for both Service members and employers.

(2) *DOL–VETS.* (i) A person may file a complaint with the DOL–VETS or initiate private legal action, if alleging that an employer, including any Federal Executive Agency or the OPM, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits under USERRA.

(ii) Using ESGR's mediation services is not a prerequisite for filing a complaint with DOL–VETS. The complaint may be filed in writing, or electronically. Instructions and the forms can be accessed at the DOL–VETS Web site (available at *http://www.dol.gov/elaws/vets/userra/1010.asp*).

(iii) DOL–VETS receives complaints from veterans and service members who believe their USERRA rights were violated. DOL–VETS investigates these complaints, and if the evidence supports a conclusion that a claimant's USERRA rights have been violated, will work with the employer and employee to obtain an appropriate resolution. If those efforts are unsuccessful—regardless of the outcome—the employee/claimant may request that his or her case be referred to DOJ or OSC for further review and consideration of representation in U.S. District Court or before the Merit Systems Protection Board (MSPB) as appropriate.

(3) *DOJ.* (i) DOJ is the agency under the Attorney General that enforces USERRA matters involving State and local government employers and private-sector employers. DOJ receives USERRA cases referred by DOL–VETS.

(ii) DOJ reviews USERRA cases to determine if representation is appropriate. In cases found to have merit, the Attorney General will commence court action on behalf of the Service member, to be prosecuted by DOJ attorneys.

(4) *OSC.* (i) OSC is an independent Federal agency that enforces USERRA matters involving State and local government employers and private-sector employers. OSC receives USERRA cases referred by DOL–VETS.

(ii) OSC reviews USERRA cases to determine if representation is appropriate. In cases found to have merit, OSC will initiate an action before the Merit Systems Protection Board (MSPB), also an independent, Federal agency, serving as the guardian of Federal merit systems. If OSC declines representation, the claimant may still file an appeal with the MSPB.

Dated: February 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–04306 Filed 2–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0081]

Safety Zones; Fireworks Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer First Class Ronald Sampert U.S. Coast Guard; telephone 718–354–4154, email *ronald.j.sampert@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Relevent Partners, LLC, Pier 54, Hudson River Safety Zone, 33 CFR 165.160(5.8).	• Launch site: A barge located in approximate position 40°44′31″ N. 074°01′00″ W. (NAD 1983), approximately 380 yards west of Pier 54, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge. • Date: February 19, 2016. • Time: 8:30 p.m.–10 p.m.
2. Novo Nordisk, Ellis Island Safety Zone, 33 CFR 165.160(2.2)	• Launch site: A barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N. 074°02′09″ W. (NAD 1983) about 365 yards east of Ellis Island. This Safety Zone is a 360-yard radius from the barge. • Date: March 10, 2016. • Time: 8:45 p.m.–10 p.m.
3. American Portfolios Holding, Inc., Ellis Island Safety Zone, 33 CFR 165.160(2.2).	• Launch site: A barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N. 074°02′09″ W. (NAD 1983) about 365 yards east of Ellis Island. This Safety Zone is a 360-yard radius from the barge. • Date: May 14, 2016. • Time: 9:00 p.m.–10:10 p.m.
4. City of Poughkeepsie, Independence Day Celebration, Poughkeepsie, NY, Hudson River Safety Zone, 33 CFR 165.160(5.13).	• Launch site: A barge located in approximate position 41°42′24.50″ N. 073°56′44.16 ″ W. (NAD 1983), approximately 420 yards north of the Mid Hudson Bridge. This Safety Zone is a 300-yard radius from the barge. • Date: July 4, 2016. • Time: 8:30 p.m.–10:30 p.m.
5. City of Yonkers July 4th Fireworks, Yonkers, NY, Hudson River Safety Zone, 33 CFR 165.160(5.5).	• Launch site: A barge located in approximate position 40°56′14.5″ N. 073°54′33″ W. (NAD 1983), approximately 475 yards northwest of the Yonkers Municipal Pier, New York. This Safety Zone is a 360-yard radius from the barge. • Date: July 04, 2016. • Time: 08:45 p.m.–10:15 p.m.
6. Intrepid Museum Fireworks Display, Pier 84 Hudson River Safety Zone, 33 CFR 165.160(5.9).	• Launch site: A barge located in approximate position 40°45′56.9″ N. 074°00′25.4″ W. (NAD 1983), approximately 380 yards west of Pier 84, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge. • Date: May 7, 2016. Time: 8:20 p.m.–9:30 p.m.

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: February 9, 2016.

M.H. Day,

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

[FR Doc. 2016–04472 Filed 2–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2014–0246]

RIN 1625–AA87

Security Zone, John Joseph Moakley United States Courthouse; Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone within Sector Boston's Captain of the Port (COTP) Zone on the waters in the vicinity of John Joseph Moakley United States Courthouse, Boston, MA. This security zone will expedite public notification of high profile court proceedings at the Moakley Courthouse and is necessary to protect people, property, and the Port of Boston from subversive acts.

DATES: This rule is effective March 31, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2014–0246 in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone (617)223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
§ Section
TFR Temporary Final Rule
U.S.C. United States Code
USCG United States Coast Guard

II. Background Information and Regulatory History

On Thursday November 20, 2014, the Coast Guard published a NPRM in the **Federal Register** (79 FR 69078). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this security zone. No Public meetings were requested or held. Thirty formal written comments were received.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1 which collectively authorizes the Coast Guard to establish security zones.

The John Joseph Moakley United States Courthouse houses the United States Court of Appeals for the First Circuit, the United States District Court for the District of Massachusetts, and the United States Attorney's Office for the District of Massachusetts. Consequently, high profile events and court proceedings take place at the Moakley Courthouse, resulting in a heightened security posture. With this in mind, the Captain of the Port, Sector Boston, has determined that a security zone is necessary to better protect and secure persons and property during high profile court proceedings and events.

Establishing a security zone on an ad hoc basis is administratively cumbersome and reduces the opportunity for public participation in the development of the rule. Thus, to lessen administrative overhead and to maximize public participation, this rule establishes a security zone near the courthouse that will remain in effect permanently but will be enforced only when deemed necessary by the COTP. The COTP will notify the public of the enforcement of this security zone by publishing a Notice of Enforcement (NOE) in the **Federal Register** and via the other means listed in 33 CFR 165.7. This permanent security zone will be published in 33 CFR 165.120.

IV. Discussion of Comments, Changes, and the Rule

We received ten comments on the NPRM to establish a permanent security zone within Sector Boston's COTP Zone. The NPRM proposed a five hundred (500) yard security zone that allowed vessels to enter the security zone, without permission, as long as such vessels proceeded through the area with caution and operated at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules, as published in 33 CFR part 83 and remain beyond two hundred and fifty (250) yards of the Moakley Courthouse. Further, vessels could enter within two hundred and fifty (250) yards with permission of the COTP or the COTP's representative. The comments we received were primarily from owners, operators, and employees of commercial passenger vessels, including the daily commuter ferry vessels that transfer passengers at the Rowes Wharf Ferry Terminal. Other comments received were from the property management company of Rowes Wharf and a non-profit, public interest organization that promotes a clean, alive, and accessible Boston Harbor.

While none of the comments expressed concern with the proposed speed restrictions, there were significant concerns with the two hundred and fifty (250) yard security zone, in that vessels could not enter without permission of the COTP. This area entails the entrance into Fort Point Channel and Rowes Wharf. Rowes Wharf is the number one passenger transfer marine ferry terminal in Boston Harbor. In each of the comments, the consensus was that a two hundred and fifty (250) yard enforced security zone could potentially disrupt the water transportation system of Boston Harbor, which would have serious economic impacts upon commercial operators.

In January 15, 2015, without adequate time to address the comments regarding the impact of the two hundred and fifty (250) yard security zone, the Coast Guard published a temporary final rule (TFR), entitled ''Security Zone, John Joseph Moakley United States Courthouse; Boston, MA'' (see 80 FR 2013) in preparation for the trial of the Boston Marathon bomber, Dzhokhar Tsarnaev, which reduced the restricted area to one hundred (100) yards. Publishing a new NPRM to reflect this change and delaying the effective date would have been impracticable and contrary to the public interest since it would have inhibited the Coast Guard's ability to fulfill its statutory missions to protect people, property, and the Port of Boston from subversive acts during this high profile court proceeding. Accordingly, under 5 U.S.C. 553(d)(3), the Coast Guard found that good cause existed for publishing a TFR with an

effective date within 30 days of publication in the **Federal Register**.

The TFR established a five hundred (500) yard security zone that allowed vessels to enter the security zone, without permission, as long as such vessels proceeded through the area with caution and operated at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules, and remain beyond one hundred (100) yards of the Moakley Courthouse. Further, vessels could enter within one hundred (100) yards with permission of the COTP or the COTP's representative.

The Boston Marathon Trial lasted approximately six months. During this period while the TFR was being enforced, the Coast Guard received no negative comments. During multiple port partner meetings throughout that period, multiple entities who commented on the original NPRM, noted that the one hundred (100) yard security zone was not an issue, as it was having no impact on their business.

The COTP has decided, based on the input from the law enforcement personnel that enforced the security zone established by the TFR, and the formal comments made in response to the NPRM, to issue a final rule on the NPRM that would use a one hundred (100) yard security zone as used in the TFR vice a two hundred and fifty (250) yard security zone as proposed in the original NPRM. This modification to the NPRM would be both adequate to address the concerns articulated by the public and sufficient to protect and secure persons and property during high profile court proceedings and events at the John Joseph Moakley United States Courthouse, Boston, MA.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and (E.O.s) and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. First, based on the comments and feedback from the NPRM on the permanent security zone and the TFR on the temporary security zone, we feel that decreasing the two hundred and fifty (250) yards to one hundred (100) yards will minimize the impact to vessels, such as commuter ferries servicing Rowes Wharf, because they will be able to transit their normal routes. Second, the Courthouse is likely to shut down the harbor dock to water Taxis during trials. Third, mariners may still pass through the security zone, within one hundred (100) yards of the Moakley Courthouse, with authorization from the COTP or a designated on-scene representative. Finally, such notification of this security zone will be published by Notice of Enforcement (NOE) in the **Federal Register**, through the local Notice to Mariners, Broadcast Notice to Mariners, and through extensive public outreach.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 persons.

The Coast Guard received no comments from the Small Business Administration on this 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.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule involves the establishment of a permanent security zone. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.120 to read as follows:

§ 165.120 Security Zone, John Joseph Moakley United States Courthouse, Boston, MA.

(a) *Location.* This security zone encompasses all U.S. navigable waters, from surface to bottom, within five hundred (500) yards of the John Joseph Moakley United States Courthouse (Moakley Courthouse) in Boston, MA, and following any natural waterside seawall configuration.

(b) *Regulations.* While this security zone is being enforced, the following regulations, along with those contained in 33 CFR 165.33, apply:

(1) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port (COTP), Sector Boston. However, the COTP hereby grants vessels permission to enter this security zone as long as such vessels proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules as published in 33 CFR part 83 and remain beyond one hundred (100) yards of the Moakley Courthouse in Boston, MA, following any natural waterside seawall configuration enclosed by a line connecting the following points:

Latitude	Longitude
42°21′15″ N	71°02′54″ W.; Bounded by the curvature of the seawall, thence to
42°21′18″ N	71°02′43″ W.; thence to
42°21′20″ N	71°02′40″ W.; Bounded by 100 yards off the curvature of the seawall, thence to
42°21′16″ N	71°02′57″ W.; thence to point of origin.

(2) Although vessels have permission to enter the five hundred (500) yards security zone under the conditions mentioned in the preceding paragraph, no person or vessel may come within one hundred (100) yards of the Moakley Courthouse under any conditions unless given express permission from the COTP or the COTP's designated representatives.

(3) Any person or vessel permitted to enter the security zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when directed by the COTP or the COTP's representatives.

(4) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center) to obtain permission.

(5) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) *Effective and enforcement period.* This security zone is in effect permanently but will only be enforced when deemed necessary by the COTP. Anyone, including members of federal, state or local law enforcement agencies, may request that this security zone be enforced.

(d) *Notification.* The COTP will notify the public of the enforcement of this security zone by publishing a Notice of Enforcement (NOE) in the **Federal Register** and via the other means listed in 33 CFR 165.7. Such notifications will include the date and times of enforcement, along with any pre-determined conditions of entry.

(e) *COTP representative.* The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, federal, state or local law enforcement or safety vessel, or a location on shore.

Dated: February 17, 2016.

C.C. Gelzer,

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

[FR Doc. 2016–04429 Filed 2–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0127]

RIN 1625–AA00

Safety Zone; Sunken Vessel, North Channel, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 250 yard temporary safety zone within Sector Boston's Captain of the Port (COTP) Zone for a sunken vessel located in Boston Harbor's North Channel. The safety zone will be in effect while the sunken vessel remains on the sea floor to facilitate safe navigation, survey operations, and salvage operations. This action is necessary to ensure that vessels that transit the area are not endangered by hazards associated with a sunken vessel. Entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective without actual notice from March 1, 2016 through March 31, 2016. For the purposes of enforcement, actual notice will be used from February 16, 2016 through March 1, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0127 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient time to publish an NPRM and solicit comments from the public before establishing a safety zone to address an existing hazard to navigation. The nature of the navigational hazard requires the immediate establishment of a safety zone.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with removing cargo from the vessel and refloating the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with a sunken vessel in a Federal Navigation Deep Draft Channel will be a safety concern for vessels that may transit the North Channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone until the exact location can be determined, and for the safety of vessels and personnel involved in survey and salvage operations. This rule will remain in effect for the time stated herein but will be cancelled if response activities are finished before March 31, 2016. The preliminary estimate for completion of the survey to determine exact location is February 17, 2016. Once the exact location is determined, the COTP will further evaluate if the channel can be opened to vessel traffic. If the sunken vessel is located outside of the North Channel, the safety may still be needed during times of salvage operations. This temporary final rule provides for an extended enforcement period in case of unforeseen circumstances that prevent the contractors from completing the work within their initial estimated timeline.

IV. Discussion of the Rule

The sunken vessel addressed in this rule is the tug Emily Anne. The tug Emily Anne sank at in the early morning hours of February 16, 2016 in approximate position; 42°22.4′ N., 70°54.77′ W. This rule establishes a safety zone until the exact position of the sunken vessel can be determined and during survey or salvage operations. The safety zone will cover all navigable waters from surface to bottom, within a 250 yard radius of position 42°22.4′ N., 70°54.77′ W. This position is located by buoy 2 Boston Harbor's North Channel. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters until the exact position can be determined and during survey and salvage operations. If the sunken vessel is determined to be located outside the North Channel, the COTP will reopen the North Channel to vessel traffic and use the safety zone during times of survey or salvage operations if needed. The owner of the vessel is in the process of arranging salvage arrangements. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. A majority of vessel traffic will be able to transit Boston Harbor's South Channel. The larger deep draft vessels cannot transit the South Channel and they will be affected by this safety zone until an exact location of the sunken vessel can be determined. If the sunken vessel is located outside the channel, vessels will be able to transit in the channel. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone possibly lasting more than 31 days that will prohibit entry into the North Channel. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. In accordance with Coast Guard NEPA Implementing Procedures, while environmental impacts were considered, a written environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the **Federal Register** docket for public view.'' We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0127 to read as follows:

§ 165.T01–0127 Safety Zone: Sunken Vessel, North Channel, Boston, MA

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters from surface to bottom, within a 250 yard radius of position 42°22.4′ N., 70°54.77′ W.

(b) *Regulations.* While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP), Sector Boston.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617–223–5757 (Sector Boston Command Center) to obtain permission.

(4) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) *COTP Representative.* The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the

COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, federal, state or local law enforcement or safety vessel, or a location on shore.

(d) *Effective and enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from February 16, 2016 until March 31, 2016, unless terminated sooner by the COTP.

(e) *Notification.* The Coast Guard will notify the public of the enforcement of this safety zone by Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

Dated: February 16, 2016.

C.C. Gelzer,

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

[FR Doc. 2016–04475 Filed 2–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 70

RIN 2900–AO92

Veterans Transportation Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, a Department of Veterans affairs (VA) proposed rule concerning VA's direct transportation of persons for the purposes of examination, treatment, and care. Section 202 of the Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, as amended, authorized VA to carry out a program to transport any person to or from a VA facility or VA-authorized facility, for the purpose of examination, treatment, or care. VA is authorized to carry out this program until December 31, 2016. These regulations provide guidelines for veterans and the public regarding this program, hereafter referred to as the Veterans Transportation Service (VTS).

DATES: *Effective Date:* This rule is effective March 31, 2016.

FOR FURTHER INFORMATION CONTACT: David Riley, Director, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Rd., Atlanta, GA 30329–1647, (404) 828–5601. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A proposed rule concerning VA's direct transportation of persons for the purposes of examination, treatment, and care was published in the **Federal Register** on May 27, 2015. 80 FR 30190. This rule set forth proposed regulations for the VTS, a program where VA would directly transport veterans and other persons to or from VA or VA-authorized facilities for the purposes of examination, treatment, or care. Specifically, these regulations would define eligible persons, how they may apply for transportation benefits, and how VA would provide transportation, including such limitations as would be necessary for the safe and effective operation of VTS.

VA invited interested persons to submit comments on the proposed rule on or before July 27, 2015, and we received one comment regarding inconsistent use of and reference to the term ''service dog'' in proposed 38 CFR 70.71(b)(2) and 70.73(a). Section 70.71 relates to eligibility for VTS, and § 70.71(b)(2) as proposed would create VTS eligibility for enrolled veterans for the purpose of retrieval of, adjustment of, or training concerning medications, prosthetic appliances, or a service dog (as defined in 38 CFR 17.148). Section 70.73 relates to arrangement of and requests for transportation under VTS, and § 70.73(a) as proposed would require an eligible person that wanted to use VTS to provide VA with certain information to include any special needs that must be accommodated to allow for transportation (*e.g.* wheelchair, oxygen tank, service or guide dog). Unlike § 70.71(b)(2) as proposed, § 70.73(a) as proposed did not reference § 17.148 and therefore would not be limited by the meaning of the term ''service dog'' as it is defined in § 17.148. As noted by the commenter, the lack of consistency in referencing § 17.148 in both §§ 70.71(b)(2) and 70.73(a) creates confusion as to whether a different meaning of the term ''service dog'' should be applied when determining VTS eligibility under § 70.71, versus when determining what is required to arrange or request VTS transport under § 70.73. As also noted by the commenter, a proposed revision to another VA regulation would define the term ''service animal'' in 38 CFR 1.218(a)(11) more broadly than the term ''service dog'' is defined in § 17.148. *See* 79 FR 69379. Since VA received this comment, § 1.218(a)(11) has been revised to include this broader definition of ''service animal.'' *See* 80 FR 49157. Ultimately, the commenter asserted that § 70.71(b)(2) should be revised to refer to the broader definition of ''service animal'' in § 1.218(a)(11).

We agree with the commenter that if a person is eligible for VTS and traveling with a service animal, then the broader definition of ''service animal'' in § 1.218(a)(11) should be used in VTS regulations. As noted by the commenter, if the broader definition of ''service animal'' in § 1.218(a)(11) was not used in VTS regulations, then VA may create conflicting situations where a person would be permitted to bring a ''service animal'' as defined in § 1.218(a)(11) into a VA facility, but would not be able to use VTS to be transported with such an animal to or from a VA facility. We therefore revise § 70.73(a) to add a reference to § 1.218(a)(11). This revision to § 70.73(a) addresses the commenter's concern that VA's definition of ''service animal'' in § 1.218(a)(11) should be applied consistently in the context of service animal access, whether the issue is a veteran getting into a VA facility with their service animal, or a veteran getting to the entrance of that VA facility with their service animal via VA transportation.

We do not, however, adopt the commenter's suggestion to revise § 70.71(b)(2) to reference ''service animal'' as defined in § 1.218(a)(11). As stated earlier in this final rule, § 70.71(b)(2) as proposed would create VTS eligibility for, among other things, transportation related to training a ''service dog'' that is recognized under § 17.148. If we revised § 70.71(b)(2) to replace the reference to ''service dog'' in § 17.148 with a reference to ''service animal'' in § 1.218(a)(11), we would instead create VTS eligibility for transportation related to training a ''service animal'' that is recognized under § 1.218(a)(11). However, this would conflict with VA's service dog benefits standards in § 17.148, because § 17.148(c) has specific training requirements that are not present in § 1.218(a)(11). The commenter's suggested revision to § 70.71(b)(2) would create scenarios where VA could provide VTS transport to support the non-specific training of a ''service animal'' that is recognized under § 1.218(a)(11), although VA could not recognize that training under § 17.148(c) for the purposes of providing service dog benefits. Such a practice could be interpreted as VA supporting non-specific training that is not recognized under § 17.148(c), and would erode VA's training requirements in § 17.148(c). To avoid this conflict between VA standards related to service animal access in § 1.218(a)(11) and VA standards related to service dog benefits in § 17.148, we do not make the revision to § 70.71(b)(2) as suggested by the commenter.

We additionally clarify that VTS travel to receive training with approved service dogs under § 17.148 would only be approved travel under § 70.72(d). The types of authorized transportation under § 70.72(a)–(c) must be to or from VA or

VA-authorized facilities. However, transportation to participate in ''retrieval of, adjustment of, or training concerning . . . a service dog under § 17.148'' (as stated in § 70.71(b)(2)) would not be to or from a VA or VA-authorized facility because VA does not conduct, facilitate, or pay for service dog training. While VA does recognize specific training under § 17.148(c) for the purpose of paying service dog benefits, the training facilities themselves are not considered VA or VA-authorized facilities. Section 70.72(d) authorizes VTS transportation between locations other than VA or VA-authorized facilities, and such transportation may only be authorized when a VA clinician has determined that such transportation would be needed to promote, preserve, or restore the health of the individual. We reiterate from the proposed rule that § 70.72(d) is intended to authorize transportation that is the basis for promoting, preserving, or restoring the health of the individual, such as with aiding a visually impaired person to learn or update navigation skills, or to provide therapeutic day-trips or outings for individuals in VA residential treatment programs such as a VA Community Living Center. Under this analysis above as reiterated from the proposed rule, we interpret that transportation for ''retrieval of, adjustment of, or training concerning . . . a service dog . . .'' under § 70.71(b)(2) could be a type of approved transportation in § 70.72(d) if a VA clinician determined it was needed to promote, preserve, or restore health. We note that § 70.71(a) prevents individuals from claiming benefits under the VTS program and the beneficiary travel program for the same trip to obtain a service dog that is recognized under § 17.148. We also note that in most cases we anticipate that individuals would use the beneficiary travel benefit instead of VTS to obtain a service dog that is recognized in § 17.148, because VTS travel resources cannot be relied upon to travel greater distances that typically necessitate air travel, for instance, and service dog training organizations recognized under § 17.148 are not located in every State.

We additionally clarify one issue that was not raised by the commenter related the transportation of guests using VTS resources. Section 70.71(i) permits guests to travel with a veteran or servicemember if resources are available after providing services to eligible individuals in § 70.71(b)–(h). As permitted by § 70.71(i), guests may travel with a veteran or servicemember, but may not travel unaccompanied. We recognize that in some cases, a guest that travels with a veteran or servicemember to a VA medical facility may need to make a return trip from the VA medical facility unaccompanied, such as when a veteran or servicemember must be admitted to an inpatient treatment setting. In such a case, the guest of such a veteran or servicemember may make the return trip from the VA medical facility unaccompanied, because VA anticipated in any case completing a return trip for the guest as part of the travel permitted under § 70.71(i). We do not make any changes to the regulation text, however, because we interpret a return trip from a VA medical facility for an unaccompanied guest to be part of traveling with the veteran or servicemember under § 70.71(i).

Based on the rationale set forth here and in the proposed rule, VA is adopting the provisions of the proposed rule as a final rule with the changes to § 70.73(a) as described above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule at § 70.73 contains new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). On May 27, 2015, in a proposed rule published in the **Federal Register**, we requested public comments on the new collections of information. 80 FR 30190. We did not receive any comments on the new collection of information. The information collection is pending OMB approval. Notice of OMB approval for this information collection will be published in a future **Federal Register** document. Until VA receives approval from OMB for the information collection, VA will not collect information associated with this rulemaking until OMB approves the information collection.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is not a significant regulatory action under Executive Order 12866 because it is likely to result in a regulatory action that may have an annual effect on the economy of $100 million or more. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by

following the link for VA Regulations Published from FY 2004 through fiscal year to date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on January 28, 2016, for publication.

List of Subjects in 38 CFR Part 70

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—Veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 24, 2016.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 70 as follows:

PART 70—VETERANS TRANSPORTATION PROGRAMS

■ 1. The authority citation for part 70 is revised to read as follows:

Authority: 38 U.S.C. 101, 111, 111A, 501, 1701, 1714, 1720, 1728, 1782, 1783, and E.O. 11302, 31 FR 11741, 3 CFR, 1966–1970 Comp., p. 578, unless otherwise noted.

■ 2. Revise the heading for part 70 to read as set forth above.

§§ 70.1 through 70.50 [Designated as Subpart A]

■ 3. Designate §§ 70.1 through 70.50 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Beneficiary Travel and Special Mode Transportation Under 38 U.S.C. 111

■ 4. Add subpart B to read as follows:

Subpart B—Veterans Transportation Service Under 38 U.S.C. 111A

Sec.

70.70 Purpose and definitions.
70.71 Eligibility.
70.72 Types of transportation.
70.73 Arranging transportation services.

Subpart B—Veterans Transportation Service Under 38 U.S.C. 111A

§ 70.70 Purpose and definitions.

(a) *Purpose.* This subpart implements the Veterans Transportation Service (VTS), through which VA transports eligible persons to or from a VA or VA-authorized facility or other place for the purpose of examination, treatment, or care.

(b) *Definitions.* For purposes of this subpart:

Attendant has the meaning set forth in § 70.2, and also means an individual traveling with a veteran or servicemember who is eligible for travel under VTS and requires the aid and/or assistance of another person.

Eligible person means a person described in § 70.71.

Guest means any individual the veteran or servicemember would like to have accompany him or her to an appointment but whose presence is not medically required.

Scheduled visit means that a VA beneficiary had an appointment that was made before she or he appeared at a VA, or VA-authorized, facility, or that a VA beneficiary was specifically authorized to appear at such facility on the date of the visit in order to obtain examination, treatment, or care. Examples of scheduled visits include: Regular appointments for examination, treatment, or care; visits to undergo laboratory work; or doctor-recommended visits to clinics with open hours.

Unscheduled visit means a visit to a VA, or VA-authorized, facility for purposes of examination, treatment, or care that was not recorded in VA's scheduling system prior to the veteran's visit. For example, an unscheduled visit may be for a simple check of a person's blood pressure, for counseling, or for clinical intervention.

(Authority: 38 U.S.C. 111A, 501, 1714)

§ 70.71 Eligibility.

Except as provided in paragraph (j) of this section, VA facilities may provide VTS benefits to the following:

(a) *Persons eligible for beneficiary travel.* All persons eligible for beneficiary travel benefits in § 70.10 are eligible for VTS benefits (however, persons cannot claim benefits under both programs for the same trip or portion of a trip).

(b) *Enrolled veterans.* Regardless of a veteran's eligibility for beneficiary travel, VA may provide VTS to veterans enrolled in VA's health care system who need transportation authorized under § 70.72 for:

(1) A scheduled visit or urgent care;

(2) Retrieval of, adjustment of, or training concerning medications and prosthetic appliances, or a service dog (as defined in 38 CFR 17.148);

(3) An unscheduled visit; or

(4) To participate and attend other events or functions, as clinically determined by VA, for the purposes of examination, treatment, or care.

(c) *Non-enrolled veterans.* VA may provide VTS to veterans not enrolled in VA's health care system who need transportation authorized under § 70.72 for:

(1) A compensation and pension examination;

(2) An unscheduled or walk-in visit;

(3) To apply for enrollment or health care benefits; or

(4) To participate and attend other events or functions, as clinically determined by VA, for the purposes of examination, treatment, or care.

(d) *Servicemembers.* VA may provide VTS to a member of the Armed Forces (including the National Guard or Reserve) traveling to a VA or VA-authorized facility for VA hospital care or medical services, including

examination, treatment or care, a compensation and pension examination, or to enroll or otherwise receive benefits for which they are eligible.

(e) *Prospective Family Caregivers and Family Caregivers.* (1) VA may provide VTS to a prospective Family Caregiver who has applied for designation as a Family Caregiver under 38 CFR 71.25(a) when the travel is for purposes of assessment and training under 38 CFR 71.25(c) and (d).

(2) VA may provide VTS to a Family Caregiver (who is approved and designated under 38 CFR 71.25) of veteran or servicemember described in paragraphs (b) through (d) of this section to:

(i) Accompany or travel independently from a veteran or servicemember for purposes of examination, treatment, or care of the veteran or servicemember; or

(ii) Receive benefits under 38 CFR 71.40(b) or (c). For health care benefits provided under 38 CFR 71.40(c)(3), Primary Family Caregivers may travel using VTS for care only if it is provided at a VA facility through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) Inhouse Treatment Initiative (CITI).

(f) *Attendants.* VA may provide VTS to an attendant of a veteran or servicemember described in paragraphs (b) through (d) of this section.

(g) *Persons receiving counseling, training, or mental health services.* VA may provide VTS to persons receiving counseling, training, or mental health services under 38 U.S.C. 1782 and 38 CFR 71.50.

(h) *CHAMPVA beneficiaries.* VA may provide VTS to persons eligible for health care under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) under 38 CFR 17.270 through 17.278, provided that such care is being provided at a VA facility through the CHAMPVA Inhouse Treatment Initiative (CITI).

(i) *Guests.* For each veteran described in paragraph (b) or (c) of this section or member of the Armed Forces described in paragraph (d) of this section, a guest may travel with the veteran or servicemember provided resources are still available after providing services to individuals identified in paragraphs (b) through (h) of this section.

(j) *Limitations on eligibility.* Notwithstanding an individual's eligibility under this section:

(1) A person may be ineligible for transportation services if VA determines the person's behavior has jeopardized or could jeopardize the health or safety of other eligible users of VTS or VA staff, or otherwise has interfered or could interfere with the safe transportation of eligible persons to or from a VA facility or other place.

(2) Only one person may travel with an eligible veteran or servicemember as a Family Caregiver, attendant, or guest, unless a VA clinician determines that more than one such person is needed or would otherwise be beneficial to the examination, treatment, or care of the eligible veteran or servicemember. Family Caregivers traveling for benefits under paragraph (e)(1) or (e)(2)(ii) of this section are not subject to this limitation.

(3) Persons under the age of 18 may accompany another person using VTS with the consent of their parent or legal guardian and the medical facility director or designee. VA transportation of children is not available if State law requires the use of a child restraint, such as a child safety seat or booster seat. In making determinations under this provision, the medical facility director or designee will consider:

(i) The special transportation needs of the child, if any;

(ii) The ability to transport the child safely using the available resources;

(iii) The availability of services at the facility to accommodate the needs of the child;

(iv) The appropriateness of transporting the child; and

(v) Any other relevant factors.

(Authority: 38 U.S.C. 111A, 1714, 1720G, 1781, 1782, 501)

§ 70.72 Types of transportation.

The following types of transportation may be provided by VA facilities through VTS:

(a) *Door-to-door service.* VA facilities may use VTS to transport, on a scheduled or unscheduled basis, eligible persons between a VA or VA-authorized facility and their residence or a place where the person is staying. VA facilities may use VTS to transport eligible persons to and from a VA or VA-authorized facility and another location identified by the person when it is financially favorable to the government to do so.

(b) *Travel to and from designated locations.* VA facilities may use VTS to provide transportation between a VA or VA-authorized facility and a designated location in the community on a scheduled basis.

(c) *Service between VA facilities.* VA facilities may use VTS to provide scheduled or unscheduled transportation between VA or VA-authorized health care facilities. This includes travel from one building to another within a single VA campus.

(d) *Other locations.* VA facilities may use VTS to provide scheduled or unscheduled transportation to and/or from a VA or VA-authorized facility or other places when a VA clinician has determined that such transportation of the veteran, servicemember, their attendant(s), or CHAMPVA beneficiary receiving benefits through the CITI program would be needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice, as defined in 38 CFR 17.38(b).

(Authority: 38 U.S.C. 111A, 501, 1718, 7301)

§ 70.73 Arranging transportation services.

(a) *Requesting VTS.* An eligible person may request transportation services by contacting the facility director or designee at the VA facility providing or authorizing the examination, treatment, or care to be delivered. The person must provide the facility director or designee with information necessary to arrange these services, including the name of the person, the basis for eligibility, the name of the veteran or servicemember they are accompanying (if applicable), the time of the appointment (if known), the eligible person's departure location and destination, any special needs that must be accommodated to allow for transportation (*e.g.* wheelchair, oxygen tank, or service animal as defined in 38 CFR 1.218(a)(11)(viii)), and other relevant information. Transportation services generally will be provided on a first come, first served basis.

(b) *Travel without a reservation.* Eligible persons who have provided the facility director or designee with the information referred to in the previous paragraph may travel without a reservation for the purpose of examination, treatment, or care when, for example:

(1) The person is being discharged from inpatient care;

(2) The person is traveling for an unscheduled visit, pursuant to a recommendation for such a visit by an attending VA clinician; or

(3) The person is being transported to another VA or VA-authorized facility.

(c) *Determining priority for transportation.* When the facility director or designee determines there are insufficient resources to transport all persons requesting transportation services, he or she will assist any person denied VTS in identifying and accessing other transportation options. VTS resources will be allocated using the following criteria, which are to be assessed in the context of the totality of the circumstances, so that no one factor is determinative:

(1) The eligible person's basis for eligibility. Enrolled veterans will receive first priority, followed in order by non-enrolled veterans; servicemembers; Family Caregivers; persons receiving counseling, training, or mental health services under 38 U.S.C. 1782 and 38 CFR 71.50; CITI beneficiaries; and guests. Persons eligible under more than one designation will be considered in the highest priority category for which that trip permits. VA will provide transportation to any attendant accompanying a veteran or servicemember who is approved for transportation.

(2) First in time request.

(3) An eligible person's clinical need.

(4) An eligible person's inability to transport him or herself (*e.g.,* visual impairment, immobility, etc.).

(5) An eligible person's eligibility for other transportation services or benefits.

(6) The availability of other transportation services (*e.g.,* common carriers, veterans' service organizations, etc.).

(7) The VA facility's ability to maximize the use of available resources.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0838.)

(Authority: 38 U.S.C. 111A, 501)

[FR Doc. 2016–04281 Filed 2–29–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

Continuous Emission Monitoring

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2015, on page 223, in § 75.16, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) are removed.

[FR Doc. 2016–04435 Filed 2–29–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

Continuous Emission Monitoring

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2015, on page 365, in Appendix A to Part 75, the first heading ''2.1.3. CO_2 and O_2 Monitors'' and the text following it are removed.

[FR Doc. 2016–04437 Filed 2–29–16; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 502

[Docket No. 15–06]

RIN 3072–AC61

Organization and Functions; Rules of Practice and Procedure; Attorney Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Rules of Practice and Procedure governing the award of attorney fees in Shipping Act complaint proceedings, and its regulations related to Commissioner terms and vacancies. The regulatory changes implement statutory amendments made by the Howard Coble Coast Guard and Maritime Transportation Act of 2014.

DATES: This final rule is effective: March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, *Phone:* (202) 523–5725, *Email: secretary@fmc.gov.* For legal questions, contact William H. Shakely, General Counsel, *Phone:* (202) 523–5740. *Email: generalcounsel@fmc.gov.*

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I. Executive Summary

Title IV of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Public Law 113–281 (Coble Act), enacted on December 18, 2014, amended the Shipping Act of 1984 and the statutory provisions governing the general organization of the Commission. Specifically, section 402 of the Coble Act amended the statutory provision governing the award of attorney fees, which may now be awarded to any prevailing party in a complaint proceeding. *See* 46 U.S.C. 41305(e). Section 403 of the Coble Act established term limits for future Commissioners, limited the amount of time that future Commissioners will be permitted to serve beyond the end of their terms, and established conflict-of-interest restrictions for current and future Commissioners. *See* 46 U.S.C. 301(b).

In response to these statutory amendments, the Commission published a Notice of Proposed Rulemaking (NPRM) on July 2, 2015. 80 FR 38153. Specifically, the Commission proposed to amend affected regulations to conform the regulatory language to the revised statutory text.[1] In addition, the Commission sought comment on an appropriate framework for determining attorney fee awards under the amended fee-shifting provision. The Commission offered to provide additional guidance on this issue and, where appropriate, incorporate that guidance into the Commission Rules of Practice and Procedure. To that end, the NPRM discussed three general questions on which the Commission's guidance would focus:

- Who is eligible to recover attorney fees?
- How will the Commission exercise its discretion to determine whether to award attorney fees to an eligible party?
- How will the Commission apply the new attorney-fee provision to proceedings that were pending before the Commission when the Coble Act was enacted on December 18, 2014?

The Commission received five comments, all of which focused on the framework for determining attorney fee awards and the three general questions described above. None of the comments discussed the conforming edits proposed in the NPRM. Accordingly, this final rule adopts the proposed conforming edits with minor changes, which are explained in detail below.

[1] The Coble Act amendments to 46 U.S.C. 301(b) establishing conflict-of-interest restrictions for Commissioners were not addressed in the NPRM and are outside the scope of this rulemaking. The Commission is currently evaluating the need for regulatory action in response to these amendments.

With respect to the framework for awarding attorney fees under the amended statutory language, this final rule provides the following guidance. Regarding eligibility for fee awards, the Commission interprets § 41305(e) as permitting fee recovery by prevailing parties in any Shipping Act complaint proceeding. The provision does not, however, permit fee recovery in Commission-initiated investigations. In determining whether a party has ''prevailed'' in a proceeding, the Commission will look to federal case law, to the extent practicable. Based on relevant cases, the Commission initially concludes that a complainant would generally qualify as the ''prevailing party'' in a Commission proceeding when the presiding officer awards reparations or issues a cease and desist order.

Regarding its discretion to award fees, the Commission is not specifying factors for consideration in determining fee awards. The primary consideration in determining entitlement to attorney fees will be whether such an award is consistent with the purposes of the Shipping Act, and any factors the Commission relies upon in individual cases should be consistent with these purposes. In identifying relevant factors, the Commission will keep in mind the following general principles:

- There should be no general presumption for or against awarding attorney fees;
- prevailing complainants and prevailing respondents should be treated in an even-handed manner; and
- parties should be encouraged to litigate meritorious claims and defences.

Finally, the Commission has decided to determine the applicability of § 41305(e) to pending cases on a case-by-case basis rather than through a bright-line rule. The preamble includes general guidance regarding several situations that may arise in proceedings going forward.

II. Background

Section 11(a)–(b) of the Shipping Act of 1984, codified at 46 U.S.C. 41301, establishes a procedure by which a person may file a complaint with the Commission alleging a violation of the Shipping Act.[2] Prior to the enactment of the Coble Act, 46 U.S.C. 41305(b) (section 11(g) of the Shipping Act) provided that ''[i]f the complaint was filed within . . . [three years after the claim accrued], the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.''

To implement this provision, the Commission added a sentence to Rule 253 of its Rules of Practice and Procedure. Final Rules To Implement the Shipping Act of 1984 and To Correct and Update Regulations, 49 FR 16994 (Apr. 23, 1984). After determining that more comprehensive regulations were needed, the Commission established Rule 254 (46 CFR 502.254) in 1987. Attorney's Fees in Reparation Proceedings, 52 FR 6330 (Mar. 3, 1987) (1987 Final Rule).

Section 402 of the Coble Act deleted the portion of 46 U.S.C. 41305(b) pertaining to attorney fees and added a new subsection (e), which reads as follows: ''Attorney Fees.—In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.'' These amendments affect the award of attorney fees in three significant ways. First, the revised language expands the categories of persons eligible to recover attorney fees to include any ''prevailing party,'' not merely prevailing complainants. Second, the award of attorney fees is no longer conditioned on an award of reparations; under the amended language, attorney fees are recoverable ''[i]n any action brought under section 41301.'' Finally, whereas 46 U.S.C. 41305(b) previously directed the Commission to award reasonable attorney fees to an eligible party, the new provision in subsection (e) states that such fees ''may be awarded,'' thereby granting the Commission discretion to determine the circumstances under which eligible parties are entitled to attorney fees.

The statutory provisions governing the general organization of the Commission are codified at 46 U.S.C. 301. Prior to the enactment of the Coble Act, there was no statutory limit on the number of terms a Commissioner could serve. In addition, when a Commissioner's term ended, the Commissioner could continue to serve until a successor was appointed, without any prescribed time limitation. The Commission's regulations at 46 CFR 501.2(c) reflect these statutory provisions. Section 403 of the Coble Act amended 46 U.S.C. 301(b) and established term limits for Commissioners appointed and confirmed by the Senate on or after the date of enactment, *i.e.,* December 18, 2014. Specifically, future Commissioners will be limited to two terms, in addition to the remainder of any term for which the Commissioner's predecessor was appointed. *See* 46 U.S.C. 301(b)(2)–(3). Section 403 also limited the amount of time future Commissioners will be permitted to serve beyond the end of their terms to a period not to exceed one year. *See* 46 U.S.C. 301(b)(2).

III. Summary of July 2, 2015, Notice of Proposed Rulemaking

A. Conforming Amendments

Given the amendments made by the Coble Act to 46 U.S.C. 301 and 41305, the NPRM proposed amendments to 46 CFR 502.254 and 46 CFR 501.2(c) to implement the revised statutory text. The proposed amendments to 46 CFR 502.254 included:

- Replacing references to ''complainant'' with ''prevailing party'';
- replacing references to ''respondent'' with ''opposing party'';
- replacing references to reparations awards with references to complaint proceedings more generally; and
- amending the language to clarify that the Commission now has discretion regarding the award of fees, and that fee petitions may be denied.

The Commission also proposed deleting the clause stating that recoverable attorney fees include compensation for services in related federal court proceedings.

In addition to these substantive amendments, the Commission proposed making a number of minor changes to improve the clarity and organization of Rule 254, including: Adding cross-references to relevant provisions governing formal and informal small claims; and replacing the term ''presiding officer'' in Rule 254 with the phrase, ''administrative law judge or small claims officer.''

With respect to 46 CFR 501.2(c), the Commission proposed dividing the paragraph into several subparagraphs addressing the length of Commissioner terms, removal of Commissioners, vacancies on the Commission, and term limits for both current and future Commissioners.

B. Implementing the Amended Attorney-Fee Provision

The NPRM discussed three main areas that the Commission wanted to provide guidance on: (1) Eligibility; (2) entitlement; and (3) applicability. With respect to eligibility, the NPRM noted that the Commission had interpreted the original attorney-fee provision at § 41305(b) as providing for attorney fees only to *prevailing complainants* in reparation proceedings, and that Rule 254 reflects this limitation. *See* Attorney's Fees in Reparation

[2] The Shipping Act also authorizes the Commission to initiate investigations of possible violations of the Shipping Act on its own motion. 46 U.S.C. 41302.

Proceedings, 51 FR 37917, 37918 (Oct. 27, 1986) (1986 NPRM); 46 CFR 502.254 (2015). In subsequent decisions, the Commission specified three conditions for recovering attorney fees pursuant to Rule 254: ''(1) A violation of the 1984 Act; (2) actual injury caused by such violation; and (3) payment of reparations to compensate for such injury.'' *A/S Ivarans Rederi* v. *Companhia de Navegacao Lloyd Brasileiro,* 25 S.R.R. 1061, 1063 (FMC 1990). Complainants who prevailed on the merits of the complaint, but who did not obtain a reparations award, were not eligible to recover attorney fees. *See id.* at 1064; 1986 NPRM, 51 FR at 37918.

The NPRM noted that the new attorney-fee provision provides for the award of attorney fees to the prevailing party in any action brought under section 41301. The Commission proposed to interpret this language as permitting recovery of attorney fees in all complaint proceedings, not just those in which reparations were awarded. The Commission further proposed using the definition of ''party'' described in Rule 41 (46 CFR 502.41) when applying the attorney-fee provision, and proposed to rely on relevant federal case law, to the extent practicable, in determining whether a party ''prevailed'' in a particular proceeding.

With respect to entitlement, the Commission noted in the NPRM that the new attorney-fee provision is silent as to how the Commission should exercise its discretion in awarding fees to an eligible party. Therefore, the Commission discussed two standards used by federal courts in determining entitlement to attorney fees under provisions with language similar to 46 U.S.C. 41305(e), *i.e.,* those provisions that allow for, but do not require, the award of attorney fees to the prevailing party in an action.

The first standard, used by federal courts applying the fee-shifting provision in the Copyright Act, treats prevailing plaintiffs and prevailing defendants similarly when making fee-award determinations, and the Supreme Court has cited with approval a nonexclusive list of factors for courts to consider when determining entitlement under this standard, including ''frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence.'' *Fogerty* v. *Fantasy, Inc.,* 510 U.S. 517, 534 n.19 (1994) (quoting *Lieb* v. *Topstone Industries, Inc.,* 788 F.2d 151, 156 (3rd Cir. 1986)) (internal quotation marks omitted).

The second standard, used by federal courts in applying various fee-shifting provisions in the Civil Rights Act, treats prevailing plaintiffs more favorably than prevailing respondents when determining entitlement to attorney fees. While prevailing plaintiffs ''ordinarily recover an attorney's fee unless special circumstances would render such an award unjust,'' *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402 (1968) (per curiam), prevailing defendants are awarded attorney fees only ''upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation.'' *Christiansburg Garment Co.* v. *Equal Emp't Opportunity Comm'n,* 434 U.S. 412, 421 (1978). The NPRM highlighted the differences between the two standards and requested comment on them. The NPRM also requested comment on any other standards the Commission should consider, as well as any other criteria that the Commission should apply in determining entitlement to fee awards.

Finally, the NPRM discussed the applicability of the new attorney fee provision to complaint proceedings initiated prior to December 18, 2014, the Coble Act's effective date, that were pending before the Commission on that date. The NPRM presented two options: (1) The Commission could resolve the applicability issue on a case-by-case basis in accordance with the framework established by federal courts; or (2) the Commission could establish a bright-line rule clearly defining when the old or new attorney-fee provision would apply to a case, *e.g.,* based on the date the proceeding was initiated.

IV. Overview of Comments

The Commission received five comments in response to the NPRM from the following organizations: The World Shipping Council (WSC), an organization comprising many of the major ocean common carriers; the American Association of Port Authorities (AAPA); Cozen O'Connor (Cozen), a law firm that has represented both complainants and respondents in Commission proceedings; Maher Terminals, LLC (Maher); and the Port Authority of New York and New Jersey (PANYNJ). The comments focused on the Commission's policy going forward with respect to attorney fee awards, particularly how the Commission will exercise its discretion to award fees. The commenters generally supported the Commission's proposal to rely on federal court case law, to the extent practicable, in determining whether a party ''prevailed'' in a proceeding, though Maher recommended that the Commission look to its own case law first. All of the commenters except Maher recommended that the Commission treat prevailing complainants and prevailing respondents in an even-handed manner with respect to attorney fee awards. Maher, on the other hand, recommended that the Commission treat prevailing complainants more favorably than prevailing respondents. Only two commenters, PANYNJ and Maher, commented on the applicability of the new attorney-fee provision to pending Commission cases. PANYNJ urged the Commission to apply the new provision to all pending proceedings, while Maher argued that the new provision should not be applied to any pending proceedings.

V. Final Rule and Response to Comments

A. Conforming Amendments

None of the commenters discussed the proposed conforming amendments to 46 CFR 501.2(c) and 46 CFR 502.254. For the reasons described in the NPRM, the final rule adopts these conforming amendments, with the following minor changes.

First, in the newly created § 501.2(c)(4), the Commission has clarified that the applicability of the Coble Act's new term limits for Commissioners depends on a Commissioner's *initial* appointment date. This language more accurately reflects the Commission's interpretation, as stated in the NPRM, that the new term limits apply only to future Commissioners. The proposed rule, which referred only to a Commissioner's appointment date, could have been misconstrued to mean that the term limits apply not only to future Commissioners but also to current Commissioners appointed to a new term on or after the Coble Act's effective date.

Second, the Commission has reorganized the fee petition content requirements in § 502.254(d) in order make them easier to read, and has specified that petitions must explain why fees should be awarded in the relevant proceeding. The latter amendment clarifies Rule 254's current requirement that petitioners explain the reasonableness of their claim in light of the discretionary nature of fee awards under § 41305(e).

Finally, the Commission has revised § 502.254(h), which governs appeals of orders issued by administrative law judges (ALJs) and small claims officers, to include references to the formal and informal procedures governing small claims. As the Commission noted in the NPRM, Rule 254 currently applies to

small claims but does not reference the relevant procedural rules governing such claims.[3] The Commission proposed including cross-references in proposed paragraphs § 502.254(c)(2)(i) and (ii), but inadvertently failed to include similar cross-references in proposed paragraph (h). The final rule corrects this error.

B. Implementing the Amended Attorney-Fee Provision

1. Who is eligible to recover attorney fees?

a. Proceedings

Comments

Maher asserts that § 41305(e) applies only to complaint proceedings authorized under 46 U.S.C. 41301 (*i.e.,* private party complaint proceedings alleging violations of the Shipping Act (whether seeking reparations or a cease and desist order)) but not ''other complaint proceedings, actions or investigations authorized under the Shipping Act or described in the Rules, such as complaints or proceedings under 46 U.S.C. 41302 and Rule 502.66.'' Maher Comments at 2.

Discussion

The Commission agrees with Maher that the recovery of attorney fees under § 41305(e) is limited to proceedings initiated under § 41301, *i.e.,* private party complaint proceedings, and that § 41305(e) does not apply to investigation proceedings initiated by the Commission under 46 U.S.C. 41302(a)[4] and 46 CFR 502.63.[5]

b. Parties

Comments

Maher contends that the existing definition of ''party'' in 46 CFR 502.41 is only appropriate to the extent that the entities eligible for attorney fees are parties in complaint proceedings under § 41301 and 46 CFR 502.62 (*e.g.,* complainants and respondents) and parties in proceedings under ''Section 502.66''[6] would not be covered. Maher Comments at 2. Maher also asserts that while intervenors may in certain circumstances be a ''party'' for the purposes of attorney fee recovery under federal case law, the standards applicable to specific types of parties may differ depending on the circumstances. *Id.* Maher cautioned that the definition of ''party'' in § 502.41 should not be applied in any manner suggesting an expansion of eligibility to attorney fees beyond those parties participating in complaint proceeding authorized under § 41301. *Id.*

Regarding the question of whether a party is a ''prevailing party'' eligible to recover attorney fees, WSC, AAPA, and Cozen support the Commission's proposal to rely on federal case law, to the extent practicable, in making such determinations. WSC Comments at 1; AAPA Comments at 2; Cozen Comments at 2. Cozen agrees with the Commission's interpretation that attorney fees are available to any prevailing party under the amended statutory language, not just to complainants that obtain a reparations award. Cozen Comments at 2.

WSC and AAPA urge the Commission to adopt the standard stated by the Supreme Court in *Farrar* v. *Hobby,* 506 U.S. 103 (1992), namely that a ''in order to be a prevailing party, the party seeking an attorney fee award 'must obtain an enforceable judgment against the [party] from whom fees are sought.' '' WSC Comments at 1 (quoting *Farrar,* 506 U.S. at 111); AAPA Comments at 2. The two organizations differ, however, on the application of this standard to Commission proceedings. WSC disagrees with the Commission's assertion in the NPRM that under the amended statutory language, the award of attorney fees is no longer conditioned on an award of reparations. WSC Comments at 2. WSC argues that the placement of the attorney fee provision in § 41305(e) was likely meant to reflect the expansion of attorney-fee recovery to any prevailing party, not just prevailing complainants, and that the new language does not compel or support the Commission abandoning its interpretation that the award of reparations is a prerequisite for a complainant's eligibility to recover attorney fees. *Id.* AAPA, on the other hand, argues that ''[t]o the extent the Commission might consider the statute to allow an award of fees where nonmonetary relief is awarded . . . , it would be required that an underlying Commission order mandate 'some action (or cessation of action) by the defendant,' '' AAPA Comments at 2 (quoting *Hewitt* v. *Helms,* 482 U.S. 755, 761 (1987)), ''and 'materially alter the legal relationship between the parties.' '' AAPA Comments at 2 (quoting *Lefemine* v. *Wideman,* 133 S. Ct. 9, 11 (2012) (per curiam)).

Maher urges the Commission to apply and conform its own body of authority regarding the attorney-fee eligibility of complainants under the Shipping Act, as applicable, before looking to federal case law for guidance. Maher Comments at 3. Specifically, Maher states that ''prevailing on the merits of the complaint should be the sole consideration for the threshold determination of whether a complainant 'prevailed' '' and that ''additional factors concerning actual injury and/or reparation awards or cease and desist orders are not appropriate or necessary.'' *Id.* at 3 & n.2. Regarding whether a respondent has prevailed under relevant federal case law, Maher asserts that the determination depends on which federal case law is considered relevant. *Id.* at 3. Maher argues that the Commission should adopt the standard used for other remedial statutes with similar ''prevailing party'' provisions, under which ''a defendant successfully defending against an otherwise colorable complaint (absent a finding that the plaintiff's complaint was frivolous, unreasonable, or without foundation) would not constitute 'prevailing' for the purposes of the attorney-fee provision.'' *Id.*

Discussion

The Commission agrees with Maher that ''parties'' eligible for attorney awards are only those parties to complaint proceedings brought under § 41301. With that caveat, the Commission sees no reason to deviate from the definition of ''party'' in Rule 41 when determining eligibility for attorney fees.

With respect to whether a party has ''prevailed,'' the Commission notes that the same standards ''are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party.' '' *Hensley* v. *Eckerhart,* 461 U.S. 424, 433 n.7 (1983). ''The term 'prevailing party' . . . is a 'legal term of art,' and is 'interpreted . . . consistently'—that is, without distinctions based on the particular statutory context in which it appears.'' *Smyth* v. *Rivero,* 282 F.3d 268, 274 (4th Cir. 2002) (quoting *Buckhannon Bd. & Care Home* v. *W. Va. Dep't of Health and Human Res.,* 532 U.S. 598, 603 & n.4 (2001)) (citation omitted). Nonetheless, some courts have left open the possibility that the ''text, structure, or legislative history'' of a particular fee-shifting statute may indicate that the term ''prevailing party'' in that statute is not meant to have its ''usual meaning.''

[3] The proposed regulatory text for § 502.305(b) inadvertently failed to include amendments made to that paragraph by a March 19, 2015, direct final rule (80 FR 14318), which went into effect on June 24, 2015. The final rule reflects these amendments.

[4] Subsections 41302(c)–(e) apply to both complaint proceedings under § 41301 and Commission investigations under § 41302(a).

[5] The Commission assumes that Maher meant to cite § 502.63, which governs Commission enforcement actions, rather than § 502.66, which governs amendments and supplements to pleadings.

[6] *See supra* n.4.

See T.D. v. *La Grange Sch. Dist. No. 102,* 349 F.3d 469, 475 (7th Cir. 2003).

Nothing in the text, structure, or legislative history of section 402 of the Coble Act suggests Congressional intent to depart from the consistently applied standards for determining whether a party has prevailed in a proceeding. The text of § 41305(e) does not define ''prevailing party,'' and there is limited legislative history for section 402. An informational brochure issued by the House Transportation and Infrastructure Committee states only that section 402 ''clarifies that in actions filed with the FMC alleging a violation of law pertaining to ocean shipping, the prevailing party in the proceeding may be awarded reasonable attorney fees.'' [7] In the absence of any evidence that the term ''prevailing party'' in § 41305(e) is meant to have something other than its usual meaning, the Commission will apply the standards used by federal courts in determining whether a party has prevailed in complaint proceedings under the Shipping Act.[8]

''The touchstone of the prevailing party inquiry'' is ''the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute.'' *Tex. State Teachers Ass'n* v. *Garland Indep. Sch. Dist.,* 489 U.S. 782, 792–93 (1989); *Cadkin* v. *Loose,* 569 F.3d 1142, 1148–49 (9th Cir. 2009) (applying the same test in a copyright case). In particular, the plaintiff in the proceeding ''must obtain at least some relief on the merits'' to qualify as the prevailing party. *Farrar,* 506 U.S. at 111. An award of damages, declaratory judgment, or injunction usually satisfies this test. *Lefemine,* 133 S. Ct. at 11 (citing *Rhodes* v. *Stewart,* 588 U.S. 1, 4 (1988) (per curiam)).

Complainants in Commission proceedings generally seek reparations (damages) or a cease and desist order (order directing the respondent not to engage in proscribed behavior) [9] or both. Applying the test used in other statutes, the Commission concludes that a complainant would generally qualify as the ''prevailing party'' in a Commission proceeding when the presiding officer awards reparations or issues a cease and desist order.[10]

WSC and Maher disagree with this approach. WSC argues that a reparation award should continue to be a prerequisite for attorney fee awards and downplays the importance of the placement and language of § 41305(e). Given that the Commission's interpretation of the original attorney fee provision was based on the structure, language, and legislative history of that provision, *see A/S Ivarans Rederi,* 25 S.R.R. at 1063, we reject the notion that those elements should be ignored with respect to § 41305(e). As noted above, Congress replaced the original attorney-fee provision with one that incorporates language (*i.e.,* ''prevailing party'') that is interpreted uniformly across different statutes, and WSC fails to offer any convincing justification to explain why the Commission should diverge from that interpretation with respect to § 41305(e). For similar reasons, the Commission rejects Maher's suggestion that a complainant's eligibility for attorney fees should not depend on whether the complainant has been awarded some form of relief.[11]

2. How will the Commission exercise its discretion?

a. General

Comments

Maher recommends that the Commission establish a framework for determining fees as part of this rulemaking rather than taking a piecemeal approach through adjudicatory decisions, noting that the Commission ''has the unique opportunity to address the scope and manner of discretion to be applied in matters pending before [it] (including before Administrative Law Judges) in a forthright and consistent manner.'' Maher Comments at 6.

AAPA recommends that the Commission provide direction on two broad issues related to attorney fee awards: (1) Treatment of prevailing complainants and prevailing respondents; and (2) whether the award of fees will be the rule or the exception in Shipping Act proceedings. AAPA Comments at 6–7. AAPA urges the Commission to clarify that attorney fee awards should be the exception and not the rule. *Id.* AAPA states that one of the justifications for awarding attorney fees under the Copyright Act is that ''many copyright violations do not lead to significant or easily provable damages, and that fee awards are thus necessary to provide sufficient deterrence of violations.'' *Id.* at 6 (citing *Magnuson* v. *Video Yesteryear,* 85 F.3d 1424, 1432 (9th Cir. 1996); *Gonzalez* v. *Transfer Technologies, Inc.,* 301 F.3d 601, 609–10 (7th Cir. 2002)). AAPA argues that this type of situation is not generally present in Shipping Act claims. *Id.* Accordingly, AAPA argues that the general rule should be that each party bears its own attorney fees (*i.e.,* the American Rule) and that fee-shifting should only be imposed when the particular facts of a case warrant such an award. *Id.*

Discussion

As described in detail below, the Commission is setting out general guidance on some of the major issues associated with determining entitlement to fee awards under § 41305(e). When interpreting fee-shifting provisions, courts look to the text of the statute, as well as its purpose, structure, and legislative history, *see, e.g., Bd. of Trs. of the Hotel & Rest. Emps. Local 25* v. *JPR, Inc.,* 136 F.3d 794, 802 (D.C. Cir. 1998), and the Commission has carefully considered these elements in crafting its guidance. Regarding the statutory history, it should be noted that the American rule concerning attorney fees prevailed at Commission-level proceedings from 1916 until 1984. Section 30 of the Shipping Act of 1916 provided that fees and costs could be provided to the petitioner beginning with and only in the event that the petitioner was required to seek a federal district court order to effectuate enforcement of his successful Commission order of award for reparations.

Regarding whether attorney fee awards will be the rule or the exception in Commission proceedings, the Commission notes that, in general, discretionary fee-shifting provisions in statutes protecting economic interests, like the Shipping Act, do not create a presumption that a prevailing party will be awarded fees. *See Eddy* v. *Colonial Life Ins. Co. of Am.,* 59 F.3d 201, 205 (D.C. Cir. 1995) (citing *Fogerty,* 510 U.S. at 525 n.12 (1994)) (discussing a fee-

[7] House Committee on Transportation & Infrastructure, The Howard Coble Coast Guard & Maritime Transportation Act of 2014, at 20 (2014). senateagreement.pdf.

[8] We disagree with Maher's assertion that the courts use different standards for determining whether a defendant has prevailed. The cases cited by Maher illustrate that the courts have developed different standards for determining when a prevailing defendant is entitled to attorney fees under various statutes; they do not indicate different standards as to whether a defendant has, in fact, prevailed in the proceeding.

[9] *Brewer* v. *Maralan,* 29 S.R.R. 6, 9 (FMC 2001).

[10] We offer no opinion at this time as to whether a complainant obtaining relief other than a reparations award or cease and desist order would be considered the prevailing party under § 41305(e).

[11] Maher's comments on this issue are somewhat confusing. Maher argues that we should apply existing Commission case law when interpreting § 41305(e) but then argues that, based on the new language, we should ignore one of the prerequisites for attorney fees described in those cases: The award of reparations. Moreover, Maher's proposed standard represents a greater departure from the Commission's eligibility standard under the old attorney fee provision (requiring that complainants obtain a reparations award) than the prevailing party standard used by federal courts (requiring that plaintiffs obtain some relief on the merits).

shifting provision in the Employee Retirement Income Security Act (ERISA)). In addition, Congress's decision to amend § 41305 so that the award of attorney fees is now discretionary instead of mandatory indicates an intent to eliminate the automatic award of attorney fees, *see Fogerty,* 510 U.S. at 533, and the Commission believes that any general presumption in favor of fee awards would frustrate that intent. The Commission disagrees with AAPA's contention, however, that fee awards should be ''the exception and not the rule,'' which would suggest a presumption *against* the award of fees not supported by the statutory text. The Commission believes that there should be no presumption in favor of or against attorney fee awards, entitlement to which will be determined based on factors that are consistent with the purposes of the Shipping Act.

b. Treatment of Prevailing Complainants vs. Prevailing Respondents

Comments

WSC, AAPA, Cozen, and PANYNJ support the Commission treating prevailing complainants and respondents even-handedly when determining entitlement to attorney fees. WSC Comments at 2; AAPA Comments at 1, 5; Cozen Comments at 2; PANYNJ Comments at 5–6. Comparing the Shipping Act with the Copyright Act and Civil Rights Act, WSC argues that the Shipping Act is much more similar to the Copyright Act. WSC Comments at 3. AAPA and Cozen argue that the policies underlying the Shipping Act do not rise to the same level of importance as those underlying the Civil Rights Act, *i.e.,* the elimination of discrimination and the protection of fundamental personal rights. Cozen Comments at 3; AAPA Comments at 3–4.

WSC, AAPA, and Cozen distinguish the Civil Rights Act as the only one of the three statutes to make use of ''private attorneys general'' to implement the statute's public policy goals, with Cozen and AAPA observing that, unlike complainants in Shipping Act proceedings, plaintiffs initiating actions under the Civil Rights Act often recover small amounts or only obtain injunctive relief. WSC Comments at 3; AAPA at 3–6; Cozen Comments at 3. AAPA argues that ''there is no reason to encourage Shipping Act claims by parties who do not have a financial incentive in filing the claim,'' and that ''[t]o the contrary, wise policy would counsel *dis*favoring such claims.'' AAPA Comments at 4–5. AAPA further asserts that the Act's stated purpose of providing ''a non-discriminatory regulatory process'' is best served by a non-discriminatory standard for awarding attorney fees. *Id.* at 6.

WSC, AAPA, and PANYNJ further assert that proceedings under the Civil Rights Act, unlike the Shipping Act, generally involve a mismatch of resources between individuals litigating against more powerful businesses and organizations. WSC Comments at 3; AAPA Comments at 5; PANYNJ Comments at 2. In contrast, AAPA and PANYNJ state that both complainants and respondents in Shipping Act proceedings are often sophisticated businesses, and WSC posits that parties on either side ''run the gamut from individuals and small businesses to very large corporations and public port agencies.'' WSC Comments at 3; AAPA Comments at 5; PANYNJ Comments at 2.

WSC, AAPA, Cozen, and PANYNJ also point to the fact that Congress discarded the provision granting complainants a preference with respect to attorney-fee recovery and replaced it with a facially neutral ''prevailing party'' provision, and they argue that the purpose of the amendment would be subverted if applied in a less than even-handed manner. WSC Comments at 3; AAPA Comments at 2–3, 5–6; Cozen Comments at 2–3; PANYNJ Comments at 1–2. Finally, PANYNJ theorizes that adopting a standard that is less favorable to prevailing respondents may only encourage the filing of meritless complaints. PANYNJ Comments at 2.

Maher asserts that, based on Supreme Court case law, ''the relevant analysis to determine the most appropriate standard to use in applying the new attorney-fees provision in Shipping Act complaint proceedings is to look to the comparative Congressional 'large objectives' and 'equitable considerations' pertaining to private party proceedings under the Shipping Act.'' Maher Comments at 4 (citing *Martin* v. *Franklin County Capital Corp.,* 546 U.S. 132 (2005)). Under this analysis, Maher argues that the standard most applicable to § 41305(e) is the standard applied under other remedial statutes with similar provisions, such as the Civil Rights Act, rather than the Copyright Act. *Id.* at 4. In support, Maher states that the Shipping Act regulates common carriage and grants immunity from the antitrust statutes, with the primary purpose to foster and maintain a non-discriminatory transportation system. *Id.* (citing *Consolo* v. *Fed. Mar. Comm'n,* 383 U.S. 607, 622–23 (1966)). Maher further asserts that the Supreme Court has identified two statutory factors warranting the ''ordinary recovery'' standard for prevailing plaintiffs: ''(1) complainants vindicating public rights and acting as 'private attorneys general' in private party rights of action and (2) statutes where a defendant that is required to pay attorney's fees violates federal law,'' and argues that the private enforcement of the Shipping Act through the complaint process under § 41301 meets this test. *Id.* at 4–5. Maher notes that any person can bring a complaint under § 41301, even if the complainant has not been directly injured by the alleged violation, and that when a complainant establishes a violation, the respondent has necessarily violated federal law. *Id.* at 5.

Based on the asserted similarities between the Shipping Act and statutes like the Civil Rights Act, Maher argues that the dual standard of entitlement under those statutes should apply. Maher Comments at 5–6. Specifically, Maher asserts that prevailing complainants should ordinarily recover fees while prevailing respondents should only recover fees when the complainant's action was frivolous, unreasonable, or without foundation. *Id.* Maher argues that to treat prevailing complainants and respondents in an even-handed manner with respect to awarding attorney fees could ''discourage all but the most airtight claims,'' and neither the text of the Coble Act nor the differences between the text of § 41305(e) and the earlier fee-shifting provision in § 41305(b) indicate that this was Congress's intent. *Id.* at 6 (citing *Franklin County Capital Corp,* 546 U.S. at 140).

Discussion

Upon consideration of the text, legislative history, and purposes of the Shipping Act, as well as the relevant comments, the Commission concludes that prevailing complainants and prevailing respondents should be treated in an even-handed manner in determining whether to award attorney fees. Looking first at the plain text of § 41305(e), there is no indication that successful complainants should be treated differently than successful respondents. *See Fogerty,* 510 U.S. at 522. The provision refers only to the ''prevailing party'' in an action. Moreover, Congress's decision to remove the previous fee-shifting provision, which limited eligibility for fee recovery to prevailing complainants, and replace it with a new fee-shifting provision that allows any prevailing party to recover fees, strongly suggests an intent to eliminate any preference for

prevailing complainants in fee determinations.

In addition, the various rationales justifying preferential treatment of plaintiffs in civil rights proceedings do not apply to Shipping Act complainants. Nothing in the Shipping Act's purposes or legislative history suggests that the role of a complainant is equivalent to that of a Civil Rights Act plaintiff, *i.e.,* ''the chosen instrument of Congress to vindicate 'a policy that Congress considered of the highest priority.' '' *Christiansburg Garment Co.,* 434 U.S. at 418 (quoting *Newman,* 390 U.S. at 402). Looking first at the Shipping Act's purposes, the Commission reiterates that the Act's focus is on commercial interests rather than ''dignitary rights.'' *See Eddy,* 59 F.3d at 204–05 (comparing the legislative histories of ERISA and the civil rights statutes). The purposes of the Shipping Act are to:

- Establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
- provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;
- encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and
- promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. 40101. Although these purposes are important, they do not involve the type of rights that the courts have found justify disparate treatment of prevailing plaintiffs and prevailing defendants under fee-shifting statutes.

In fact, the Shipping Act's several purposes provide support for treating prevailing complainants and prevailing respondents in an even-handed manner. The Shipping Act is intended not only to ensure a non-discriminatory process for the common carriage of goods, but also to provide and promote an efficient, competitive, and economic ocean transportation system. *See* 46 U.S.C. 40101(2), (4). These latter goals are furthered by encouraging the industry to continue to develop new ways of improving ocean transportation. In order to promote such improvements and assist the industry in evaluating potential options, it is important that the boundary between legal and illegal conduct be demarcated as clearly as possible. To that end, respondents who seek to advance meritorious defenses of their actions should be encouraged to litigate them to the same extent that complainants are encouraged to litigate meritorious claims of violations. *Cf. Fogerty,* 510 U.S. at 526–27 (making similar arguments in the context of the Copyright Act).

In addition, although complaint proceedings assist the Commission in enforcing the Shipping Act, there is no indication that Congress intended complainants to serve as ''private attorneys general.'' [12] As the Supreme Court discussed in *Newman:*

> When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law. A Title II suit is thus private in form only. When a plaintiff brings an action under that Title, he cannot recover damages. If he obtains an injunction, he does so not for himself alone but also as a ''private attorney general,'' vindicating a policy that Congress considered of the highest priority. If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees—not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II.

390 U.S. at 401–02 (footnotes omitted).

As noted by some of the commenters, the remedies and incentives under the Shipping Act are quite different. Prevailing complainants in Shipping Act proceedings are entitled to reparations for the injuries resulting from violations of the Act, and, if the injury is caused by certain prohibited activities, the complainant can recover up to twice the amount of the actual injury. 46 U.S.C. 41305(b)–(c). Accordingly, complainants have an incentive to bring claims even in the absence of fee recovery.[13] In addition, the Commission itself may investigate any conduct or agreement that it believes may be in violation of the Act, reducing the need for private action. *See* 46 U.S.C. 41302; *Aaacon Auto Transp., Inc.* v. *Medlin,* 575 F.2d 1102, 1106 (5th Cir. 1978).[14]

Finally, we agree with the majority of commenters that whereas ''[o]ftentimes, in the civil rights context, impecunious 'private attorney general' plaintiffs can ill afford to litigate their claims against defendants with more resources,'' *Fogerty,* 510 U.S. at 524, entities of all sizes, from small shippers to large carriers and marine terminal operators (MTOs), appear as complainants in Shipping Act complaint proceedings, and, similarly, respondents range from small ocean transportation intermediaries to large carriers and MTOs. Accordingly, there is not the same disparity in resources between complainants and respondents that exist generally in civil rights cases.

Based on the foregoing, the Commission will treat prevailing complainants and prevailing respondents in an even-handed manner when applying § 41305(e).

c. Factors for Consideration When Determining Entitlement

Comments

WSC asserts that if the Commission determines that complainants may be considered prevailing parties eligible for attorney fees even if they have not been awarded reparations, the Commission should still consider whether reparations were awarded, and the amount, when determining whether and in what amount to award such fees. WSC comments at 2.

Cozen recommends that the Commission adopt the Copyright Act standard and apply the criteria used by courts under that statute, and PANYNJ asserts that the Copyright Act factors are just as relevant in Shipping Act

[12] The Commission also disagrees with the comments suggesting that because losing respondents may have violated ''federal law,'' prevailing complainants should be treated more favorably in attorney fee determinations. As the *Fogerty* case amply demonstrates, this factor is not dispositive, and, even under the previous attorney-fee provision mandating fees, a violation alone was insufficient to justify an attorney-fee award; the complainant had to show injury and be awarded reparations. *See A/S Ivarans Rederi,* 25 S.R.R. at 1063.

[13] The mere fact that anyone can file a complaint, even if the person has not been injured by a Shipping Act violation, does not support the conclusion that Congress intended complainants to assume the role of ''private attorneys general,'' as Maher appears to suggest. As noted throughout the notice, fee recovery under the original attorney-fee provision was limited to injured complainants who were awarded reparations. Although § 41305(e) is broader in scope and may apply in proceedings in which no reparations are awarded, given the limited legislative history, reading this change as indicating Congressional intent to elevate the role of complainants would be a bridge too far.

[14] Congress did not wish to provide the same encouragement for private claimants under the Interstate Commerce Act as it has for Title VII litigants. . . . The private attorneys general concept, which underlies the allowance of attorneys' fees in Title VII cases, is notably absent from [the fee-shifting provision] since any required vindication of public rights in such matters as these can be accomplished by the [Interstate Commerce] Commission itself. 575 F.2d at 1106. (citation omitted).

proceedings. Cozen Comments at 2; PANYNJ Comments at 1. Cozen also urges the Commission to consider the following factors in evaluating petitions for attorney fees: the degree to which the prevailing party has prevailed, *i.e.,* did it prevail on all or only some of its claims; the relief sought versus the relief obtained; and the relationship of the attorney fees sought to those two foregoing factors. *Id.* at 3–4. In particular, Cozen asserts that the Commission should avoid situations in which the fees awarded far exceed the relief obtained, particularly when the relief awarded is far less than the amount sought by the complainant. *Id.* at 4–5.

AAPA believes that the specific factors listed in the *Fogerty* case are useful guideposts for the exercise of discretion but cautions that ''it would seem impracticable for the Commission to identify *a priori* each factor that might prove relevant to a case in the future, or that might prove necessary to fulfil the purposes of the Act.'' AAPA Comments at 6–7. AAPA therefore discourages the Commission from codifying a comprehensive list of factors in the regulation. *Id.* at 7.

Maher argues that the Copyright Act factors discussed in the NPRM are not appropriate authority or guidance to use in applying § 41305 because they are premised on the unique goals, objectives, and policies of that Act, as opposed to the goals, objectives, and policies at issue in federal remedial statutes. Maher Comments at 5 n.3. Instead, as discussed above, Maher recommends that the Commission adopt the party-specific standards used in Civil Rights Act cases. *Id.* at 5–6.

Discussion

The Commission agrees with AAPA and has elected not to codify a list of factors for consideration in determining entitlement to attorney fees. The Commission cannot predict the types of cases that may arise in the future, and specifying factors at this time unnecessarily risks restricting the discretion granted by § 41305(e).[15] The primary consideration in determining entitlement to attorney fees is whether such an award is consistent with the purposes of the Shipping Act, and any factors the Commission relies upon in individual cases should be consistent with these purposes. *See Fogerty,* 510 U.S. at 534 n.19. In identifying relevant factors, the Commission will keep in mind the following general principles discussed above:

- There should be no general presumption for or against awarding attorney fees;
- prevailing complainants and prevailing respondents should be treated in an even-handed manner; and
- parties should be encouraged to litigate meritorious claims and defences.

Several commenters urge the Commission to consider the degree of success obtained by the prevailing party in evaluating fee petitions. Cozen's comments, in particular, cite several Commission orders in which the fees awarded greatly exceeded the reparations and suggest that the Commission use its discretion to avoid such results in the future.

The degree of success obtained is a relevant factor when determining the amount of an attorney fee award, *see Hensley* v. *Eckerhart,* 461 U.S. 424, 434–36 (1983), and the Commission, relying on relevant federal case law, has considered this a relevant factor when determining reasonable attorney fee awards. *See Bernard & Weldcraft Welding Equip.* v. *Supertrans Intermodal, Inc.,* 29 S.R.R. 1348, 1358–59 (ALJ 2002) (finding that although proposed fee award based on lodestar method was far in excess of the reparations awarded, it was reasonable given other factors); *Transworld Shipping (USA), Inc.* v. *FMI Forwarding (San Francisco), Inc.,* 29 S.R.R. 876, 878–79 (FMC 2002) (affirming ALJ's reduction in compensable hours because complainant obtained only partial success); *see also* 1987 Final Rule, 52 FR at 6331.

Cozen's comments fail to explain how the changes made by the Coble Act justify changing the Commission's approach to adjusting fee awards. Congress granted the Commission discretion to determine *when* to award fees; it did not alter the standard for determining the *amount* of fees to be awarded after such a determination has been made. Section 41305(e), like the previous fee-shifting provision, allows for the award of ''reasonable'' attorney fees, and the Commission will continue to be guided by its own precedent and relevant federal case law in deciding when to adjust fee awards based on the degree of success obtained by the prevailing party.

d. Different Entitlement Standards Depending on Type of Proceeding

Comments

In response to the Commission's request for comment on whether to apply different fee entitlement standards for different proceedings (*e.g.,* small claims proceedings), Maher stated that the interests of complainants are similar regardless of the type of proceeding or the different financial capacity of complainants because all types of complaint proceeding present financial barriers to complainants. Maher Comments at 7. With respect to *pro se* complainants and small claims generally, Maher suggests that effective management of the small claims process could be a means to promote adjudication in the face of limited or imbalanced resources, *e.g.,* the Commission could consider limiting the ability of respondents to elect to remove a small claims complaint to a ''full proceeding.'' *Id.*

Discussion

The Commission agrees with Maher and has determined to apply the same standard of entitlement regardless of the type of proceeding. The Commission believes that the statute provides sufficient flexibility to address fee-award determinations in both formal and small claims proceedings.[16]

3. How will the Commission apply the provision to pending proceedings?

Comments

PANYNJ argues that the Commission ''should have the discretion to award attorney fees in a fully retrospective manner whenever it finds that an unsuccessful action or defense had been conducted in a vexatious and wasteful fashion.'' PANYNJ Comments at 2. PANYNJ cites Congress's intent to make attorney fees available in Commission proceedings, Congressional policy to reimburse litigants for costs incurred due to vexatious and abusive litigation, and the inherent power of the federal courts to award attorney fees for abusive litigation conduct even in the absence of express statutory authorization or advance notice. *Id.* PANYNJ asserts that such a policy would not give the Coble Act impermissible retrospective effect because ''[n]o litigant could have had a reasonable and legitimate expectation that it could engage in abusive, vexatious and wasteful litigation conduct without consequence'' given the courts' ability to sanction such conduct. *Id.* at 3.

Maher urges the Commission to adopt a bright-line rule and not apply § 41305(e) to any claims initiated prior to the effective date of the Coble Act. Maher Comments at 7, 9. Maher asserts

[15] Although the Commission declines to identify generally applicable factors for consideration in fee determinations, the Commission has identified below one specific factor for consideration with respect to pending cases: the status of the proceedings on Coble Act's effective date.

[16] Maher's suggestions regarding ways to improve the small claims process are outside the scope of this rulemaking.

that analyzing the applicability of § 41305(e) on a case-by-case basis would be administratively burdensome and ''would unnecessarily extend the period of uncertainty in individual cases and it could result in inconsistent decisions and therefore engender continued uncertainty.'' *Id.* at 7.

Maher contends that there is no clear Congressional or express statutory language indicating that § 41305(e) should be applied retroactively, and, therefore, the general presumption against such an application of the statute applies. Maher Comments at 7–8 (citing *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994)). Maher goes on to argue that any application of § 41305(e) would have retroactive effect on parties to pending proceedings, and therefore should not be applied to those proceedings. *Id.* at 8. Specifically, Maher asserts that for complainants to such proceedings, retroactive application of § 41305(e) would impair the rights they had when filing their complaints, *i.e.,* the statutory right to recover attorney fees, and increase their liability for past conduct and/or impose a new duty by expanding attorney-fee eligibility to prevailing respondents. *Id.* Maher further asserts that the expansion of attorney-fee liability to cease and desist complaints would potentially increase respondents' liability for past conduct and/or impose a new duty on them. *Id.* Finally, Maher contends that the potential expansion of attorney-fee recovery to intervenors or other parties would likewise increase liability and/or impose new duties on non-prevailing complainants and respondents. *Id.* at 8–9.

Discussion

As the Commission discussed in the NPRM, in determining the applicability of a newly enacted statute to pending cases, the courts first look to ''whether Congress has expressly prescribed the statute's proper reach.'' *Fernandez-Vargas* v. *Gonzales,* 548 U.S. 30, 37 (2006) (quoting *Landgraf,* 511 U.S. at 280) (internal quotation marks omitted). If the statute's reach cannot be determined from the text and the application of the normal rules of statutory construction, the court must ''determine whether the application of the statute to the conduct at issue would result in a retroactive effect,'' *Martin* v. *Hadix,* 527 U.S. 343, 352 (1999), *i.e.,* ''whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' *Landgraf,* 511 U.S. at 280; *see also Fernandez-Vargas,* 548 U.S. at 37. ''If the answer is yes,'' the courts then apply the traditional ''presumption against retroactivity by construing the statute as inapplicable to the event or act in question owing to the 'absen[ce of] a clear indication from Congress that it intended such a result.' '' *Fernandez-Vargas,* 548 U.S. at 37–38 (quoting *Immigration & Naturalization Serv.* v. *St. Cyr,* 533 U.S. 289, 316 (2001)); *see also Landgraf,* 511 U.S. at 280. In cases in which the statute would not have a ''genuinely 'retroactive' effect,'' the general rule is that ''a court should 'apply the law in effect at the time it renders its decision,' even though that law was enacted after the events that gave rise to the suit.'' *Landgraf,* 511 U.S. at 273, 277 (quoting *Bradley* v. *Sch. Bd. of City of Richmond,* 416 U.S. 696, 711 (1974)) (citation omitted).

The Commission agrees with Maher that there is no indication from either the language of the Coble Act or its legislative history to suggest Congressional intent to apply the statute retroactively. Section 402 of the Coble Act is silent as to the scope of § 41305(e)'s applicability to proceedings pending before the Commission. Although an argument could be made that the use of the broad term ''any action'' in conjunction with the verb ''brought'' demonstrates congressional intent to apply the amended attorney fee provisions to all proceedings initiated under 46 U.S.C. 41301, even if those proceedings were commenced prior to the effective date of the Coble Act, the Supreme Court expressly rejected such an interpretation when examining similar language in an amended attorney-fee provision in the Prison Litigation Reform Act of 1995 (PLRA). *See Martin,* 527 U.S. at 353–55 (stating that the language ''falls short . . . of the 'unambiguous directive' or 'express command' that the statute is to be applied retroactively'') (quoting *Landgraf,* 511 U.S. at 263, 280).

Accordingly, the relevant question is whether the application of § 41305(e) to pending proceedings would have retroactive effect, *i.e.,* whether the amended attorney-fee provision ''would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' *Landgraf,* 511 U.S. at 280. ''The inquiry into whether a statute operates retroactively demands a common sense, functional judgment about 'whether the new provision attaches new legal consequences to events completed before its enactment.' This judgment should be informed and guided by 'familiar considerations of fair notice, reasonable reliance, and settled expectations.' '' *Martin,* 527 U.S. at 357–58 (quoting *Landgraf,* 511 U.S. at 270) (citation omitted). On the other hand, ''[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law.'' *Landgraf,* 511 U.S. at 269 & 270 n.24 (citing *Republic Nat'l Bank of Miami* v. *United States,* 506 U.S. 80, 100 (1992) (Thomas, J., concurring in part and concurring in judgment)) (internal citation omitted).

The Commission has determined that the applicability of § 41305(e) to pending cases should be examined on a case-by-case basis rather than set through a bright-line rule. As explained below, the Commission disagrees with Maher's assertion that the application of § 41305(e) would have a retroactive effect in *all* pending cases. Analyzing this issue on a case-by-case basis will allow the Commission to consider the facts of each case, including the status of individual proceedings on the effective date of the Coble Act. The Commission also disagrees with Maher's contention that case-by-case consideration would be administratively burdensome, given the limited number of proceedings pending on the Coble Act's effective date and the unlikelihood that fee petitions will be filed in every proceeding.

The Commission offers the following general guidance on determining the applicability of § 41305(e) in the two most likely scenarios in which this issue would arise: (1) Pending proceedings in which the complainant prevails and is awarded reparations after the Coble Act went into effect (Scenario 1); and (2) pending proceedings in which the respondent prevails after the Coble Act went into effect (Scenario 2).[17] For purposes of this discussion, we assume that the proceedings in each scenario were in their early stages when the Coble Act went into effect. In Scenario 1, the Commission does not believe that applying § 41305(e) would, as a general matter, have a retroactive effect. In Scenario 2, the Commission believes that application of § 41305(e) would not generally result in a retroactive effect so long as any fees awarded were limited to compensation for legal services performed on or after the effective date

[17] Maher discusses retroactivity concerns in other situations (*i.e.,* proceedings in which a cease-and-desist order is issued but no reparations are awarded; proceedings in which parties other than the complainant or respondent might be considered a prevailing party). The Commission does not believe that the same type of prospective guidance is warranted or necessary for these types of scenarios, which are less likely to occur.

of the Coble Act, December 18, 2014. The Commission cautions that retroactivity determinations in individual proceedings will depend on the specific facts of each case, including the status of the proceedings on December 18, 2014. The Commission has further determined that, even in pending cases where application of § 41305(e) would not have a retroactive effect, the Commission may, in determining whether to award fees under the new provision, consider the status of the proceedings on the Coble Act's effective date.

Maher argues that in Scenario 1, application of § 41305(e) would have a retroactive effect because it would upset the complainant's statutory right to attorney fees that existed when the complaint was filed. The Commission disagrees. Attorney fee determinations are generally considered '' 'collateral to the main cause of action' and 'uniquely separable from the cause of action to be proved at trial.' '' *Landgraf,* 511 U.S. at 277 (quoting *White* v. *N.H. Dep't of Emp't Sec.,* 455 U.S. 445, 451–452 (1982)). Unlike other types of relief, attorney fees are not compensation for the injury giving rise to the action. *White,* 455 U.S. at 452. Attorney fees under the Shipping Act are no different.

The structure of the Act does not support the contention that the ''right'' to recover attorney fees under the old fee-shifting provision vested with the complainant upon the filing of a complaint. The section governing the filing of complaints, 46 U.S.C. 41301, provides that if the complaint is filed within three years after the claim accrues, the complainant may seek *reparations for injuries* caused by the Shipping Act violation. 46 U.S.C. 41301(a). Attorney fees are not mentioned in this section; instead, they are referenced in 46 U.S.C. 41305, the section governing relief to be awarded by the Commission after notice and hearing, and this section has always made clear that attorney fees are a separate form of relief from reparations. *See* 46 U.S.C. 41305(b) (2013). Accordingly, the Commission viewed attorney fees under the old provision as ''available only as an adjunct to an award of damages'' and conditioned upon *the Commission awarding reparations. See A/S Ivarans Rederi,* 25 S.R.R. at 1063. Because there was no reparations award in Scenario 1 prior to the Coble Act's effective date, the complainant was not entitled to attorney fees. The mere possibility of recovering attorney fees under the old provision cannot be considered the type of ''matured or unconditional right'' whose impairment would constitute a retroactive effect. *See Bradley,* 416 U.S. at 720. Application of § 41305(e) might upset the complainant's expectations under prior law, but, as noted above, this does not equate to a retroactive effect. *See Landgraf,* 511 U.S. at 269 & 270 n.24.

With respect to Scenario 2, Maher asserts that § 41305(e) would have a retroactive effect because allowing the respondent to potentially recover attorney fees would increase the complainant's liability for past conduct and impose a new duty. PANYNJ, on the other hand, asserts that application of the new provision would not have a retroactive effect because courts have always had the inherent authority to sanction abusive, vexatious, and wasteful litigation conduct, and no litigant could have a reasonable expectation that it could engage in such conduct without consequence.

The Commission agrees with Maher to the extent that, prior to the Coble Act, complainants reasonably expected that they would not be liable for respondents' attorney fees, even if they did not prevail. The old attorney-fee statutory provision and Rule 254 made clear that respondents were not eligible for attorney fee awards. *See* 1986 NPRM, 51 FR at 37918. The Commission disagrees with PANYNJ's contention that the inherent power of the courts to penalize certain litigation conduct has some bearing on the parties' expectations in Commission proceedings; administrative agencies, like the Commission, ''may not award attorney's fees without express statutory authority.'' *Trapp* v. *United States,* 668 F.2d 1114, 1115 (10th Cir. 1977) (citing *Turner* v. *Fed. Commc'n Comm'n,* 514 F.2d 1354 (D.C. Cir. 1975)). Awarding attorney fees to the respondent in Scenario 2 for legal services rendered prior to December 18, 2014, would thus upset the parties' reasonable expectations and would attach new legal consequences to actions undertaken by the complainant prior to the passage of the Coble Act, *i.e.,* the filing of the complaint and initial prosecution of the claim. *See Taylor P.* v. *Mo. Dep't of Elementary & Secondary Educ.,* No. 06–4254–CV–C–NKL, 2007 U.S. Dist. LEXIS 59570, at *8 (W.D. Mo. Aug. 14, 2007) (finding that application of statutory provision allowing attorney fee recovery for defendants, which was enacted after proceeding was initiated, would have retroactive effect if applied to date of filing of complaint).

Following the passage of the Coble Act, however, complainants were on notice that any prevailing party, including a prevailing respondent, was eligible for attorney fees. After that date, any expectation of continued immunity from liability for such fees would be unreasonable. *See Martin,* 527 U.S. at 360. Accordingly, in Scenario 2, awarding attorney fees for services performed by respondent's counsel on or after December 18, 2014, would not, as a general matter, attach new legal consequences to conduct completed before enactment and would not present a retroactivity problem. *See id.* at 360–61; *Taylor,* 2007 U.S. Dist. LEXIS 59570, at *8 (denying plaintiff's motion to dismiss defendant's counterclaim for attorney fees after the effective date of the attorney fee provision).

On or after December 18, 2014, complainants were on notice that they should consider the status of petitions and matters then pending before the Commission and then make reasoned decisions on how to proceed. If the complainant did not wish to be subjected to the potential liability for such fees, the complainant could have, for example, requested dismissal of the claim without prejudice under Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72). *See Martin,* 527 U.S at 361 (rejecting the assumption that the initial decision to file a claim is an irrevocable one).

The Commission reemphasizes that the above discussions represent general guidance and the conclusions reached are not necessarily binding in individual proceedings. The specific facts of each case, including the status of the proceeding on the Coble Act's effective date, may materially alter the considerations discussed above in the retroactivity analysis.

VI. Rulemaking Analyses and Notices

Effective Date

The Administrative Procedure Act (APA) generally requires a 30-day period between the publication of a final rule and its effective date. 5 U.S.C. 553(d). This requirement does not apply, however, to: (1) Rules granting an exemption or relieving a restriction; (2) interpretative rules and statements of policy; and (3) when the agency finds good cause to shorten the period between publication and the effective date. *Id.*

This final rule is effective upon publication. The final rule consists of three main components: amendments to the term and vacancy provisions in 46 CFR 501.2(c) to reflect the changes made to 46 U.S.C. 301; amendments to 46 CFR 502.254 to reflect the changes made to 46 U.S.C. 41305; and a statement of the Commission's policy with respect to the disposition of attorney-fee petitions under the amended statutory language.

Accordingly, this final rule consists of an interpretative rule and a statement of policy and is therefore not subject to the 30-day requirement.

In addition, the Commission has determined that there is good cause to make this rule effective immediately. The statutory amendments made by the Coble Act went into effect on December 18, 2014, and there is an immediate need to update the Commission's regulations (particularly the procedural regulations governing attorney-fee petitions) to reflect these changes. Further, interested parties have been provided with the opportunity to comment on the rulemaking, and none commented on the proposed amendments to the Commission's regulations, instead focusing entirely on the Commission's policy guidance with respect to attorney-fee petitions.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish an FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

Although the Commission elected to seek public comment on its proposed regulatory amendments and the application of the Coble Act's new attorney-fee provision, these matters concern the organization of the Commission, its practices and procedures, and its interpretation of statutory provisions. Therefore, the APA did not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare an FRFA in conjunction with this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

Regulatory Text

For the reasons stated in the preamble, the Commission amends 46 CFR parts 501 and 502 as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 301–307, 40101–41309, 42101–42109, 44101–44106; Pub. L. 89–56, 70 Stat. 195; 5 CFR part 2638; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Amend § 501.2 by revising paragraph (c) to read as follows:

§ 501.2 General.

* * * * *

(c) *Terms and vacancies.* (1) *Length of terms.* The term of each member of the Commission is five years and begins when the term of the predecessor of that member ends (*i.e.,* on June 30 of each successive year).

(2) *Removal.* The President may remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office.

(3) *Vacancies.* A vacancy in the office of any Commissioner is filled in the same manner as the original appointment. An individual appointed to fill a vacancy is appointed only for the unexpired term of the individual being succeeded.

(4) *Term Limits.* (i) *Commissioners initially appointed and confirmed before December 18, 2014.* When a Commissioner's term ends, the Commissioner may continue to serve until a successor is appointed and qualified.

(ii) *Commissioners initially appointed and confirmed on or after December 18, 2014.* (A) When a Commissioner's term ends, the Commissioner may continue to serve until a successor is appointed and qualified, limited to a period not to exceed one year.

(B) No individual may serve more than two terms, except that an individual appointed to fill a vacancy may serve two terms in addition to the remainder of the term for which the predecessor of that individual was appointed.

* * * * *

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965.

Subpart O—Reparation; Attorney Fees

■ 4. Revise the heading of Subpart O to read as set forth above.

■ 5. Revise § 502.254 to read as follows:

§ 502.254 Attorney fees in complaint proceedings.

(a) *General.* In any complaint proceeding brought under 46 U.S.C. 41301 (sections 11(a)–(b) of the

Shipping Act of 1984), the Commission may, upon petition, award the prevailing party reasonable attorney fees.

(b) *Definitions.*

Attorney fees means the fair market value of the services of any person permitted to appear and practice before the Commission in accordance with subpart B of this part.

Decision means:

(1) An initial decision or dismissal order issued by an administrative law judge;

(2) A final decision issued by a small claims officer; or

(3) A final decision issued by the Commission.

(c) *Filing petitions for attorney fees.* (1) In order to recover attorney fees, the prevailing party must file a petition within 30 days after a decision becomes final. For purposes of this section, a decision is considered final when the time for seeking judicial review has expired or when a court appeal has terminated.

(2) The prevailing party must file the petition with either:

(i) The administrative law judge or small claims officer, if that official's decision became administratively final under § 502.227(a)(3), § 502.227(c), § 502.304(g), or § 502.318(a); or

(ii) The Commission, if the Commission reviewed the decision of the administrative law judge or small claims officer under § 502.227, § 502.304, or § 502.318.

(d) *Content of petitions.* (1) The petition must:

(i) Explain why attorney fees should be awarded in the proceeding;

(ii) Specify the number of hours claimed by each person representing the prevailing party at each identifiable stage of the proceeding; and

(iii) Include supporting evidence of the reasonableness of the hours claimed and the customary rates charged by attorneys and associated legal representatives in the community where the person practices.

(2) The petition may request additional compensation, but any such request must be supported by evidence that the customary rates for the hours reasonably expended on the case would result in an unreasonably low fee award.

(e) *Replies to petitions.* The opposing party may file a reply to the petition within 20 days of the service date of the petition. The reply may address the reasonableness of any aspect of the prevailing party's claim and may suggest adjustments to the claim under the criteria stated in paragraph (d) of this section.

(f) *Rulings on petitions.* (1) Upon consideration of a petition and any reply thereto, the Commission, administrative law judge, or small claims officer will issue an order granting or denying the petition.

(i) If the order awards the prevailing party attorney fees, the order will state the total amount of attorney fees awarded, specify the compensable hours and appropriate rate of compensation, and explain the basis for any additional adjustments.

(ii) If the order denies the prevailing party attorney fees, the order will explain the reasons for the denial.

(2) The Commission, administrative law judge, or small claims officer may adopt a stipulated settlement of attorney fees.

(g) *Timing of rulings.* An order granting or denying a petition for attorney fees will be served within 60 days of the date of the filing of the reply to the petition or expiration of the reply period, except that in cases involving a substantial dispute of facts critical to the determination of an award, the Commission, administrative law judge, or small claims officer may hold a hearing on such issues and extend the time for issuing an order by an additional 30 days.

(h) *Appealing rulings by administrative law judge or small claims officer.* The relevant rules governing appeal and Commission review of decisions by administrative law judges (§§ 502.227; 502.318) and small claims officers (§ 502.304) apply to orders issued by those officers under this section. [Rule 254.]

■ 6. Amend § 502.305 by revising paragraph (b) to read as follows:

§ 502.305 Applicability of other rules of this part.

* * * * *

(b) The following sections in subparts A through Q of this part apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (Email transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21 through 502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.101 (Computation); 502.113 (Service of private party complaints); 502.117 (Certificate of service); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney fees in complaint proceedings). [Rule 305.]

7. Amend § 502.318 by revising paragraph (b) to read as follows:

§ 502.318 Decision.

* * * * *

(b) Attorney fees may be awarded to the prevailing party in accordance with § 502.254. [Rule 318.]

8. Amend § 502.321 by revising paragraph (b) to read as follows:

§ 502.321 Applicability of other rules of this part.

* * * * *

(b) The following sections in subparts A through Q apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (Email transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney fees in complaint proceedings). [Rule 321.]

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–04219 Filed 2–29–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Private Land Mobile Radio Service

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 80 to End, revised as of October 1, 2015, on page 413, in § 90.520, the second paragraph (b)(2) is removed.

[FR Doc. 2016–04433 Filed 2–29–16; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1812, 1819, and 1852

NASA Federal Acquisition Regulation Supplement

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule; technical amendments.

SUMMARY: NASA is making technical amendments to the NASA FAR Supplement (NFS) to provide needed editorial changes.

DATES: *Effective:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Manuel Quinones, NASA, Office of Procurement, Contract and Grant Policy Division, via email at *manuel.quinones@nasa.gov,* or telephone (202) 358–2143.

SUPPLEMENTARY INFORMATION:

I. Background

As part NASA's retrospective review of existing regulations pursuant to section 6 of Executive Order 13563, Improving Regulation and Regulatory Review, NASA conducted a review of it regulations and noted several minor inconsistencies requiring correction. A summary of changes follows:

- Revise section 1812.301(G) to match clause title at 1852.219–75.
- Revise section 1819.708–70 match clause title at 1852.219–75.
- Revise section 1852.235–73(b) to update title of the regulation NPR 2200.2.

List of Subject in 48 CFR Parts 1812, 1819, and 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1812, 1819, and 1852 are amended as follows:

■ 1. The authority citation for parts 1812 and 1819 is revised to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

1852.301 [Amended]

■ 2. Amend 1812.301(f)(i)(G) by removing the words ''Small Business Subcontracting Reporting'' and adding ''Individual Subcontracting Reports'' in their place.

PART 1819—SMALL BUSINESS PROGRAMS

1819.708–70 [Amended]

■ 3. Amend section 1819.708–70(b) by removing the words ''Individual Subcontracts Reporting'' and adding ''Individual Subcontracting Reports'' in their place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.235–73 [Amended]

■ 5. Amend section 1852.235–73(b) by removing the words ''NPR 2200.2, Guidelines'' and adding ''NPR 2200.2, Requirements'' in their place.

[FR Doc. 2016–04444 Filed 2–29–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2016–0023]

RIN 2127–AL38

Civil Penalty Factors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule provides NHTSA's interpretation of the civil penalty factors for determining the amount of a civil penalty or the amount of a compromise under the National Traffic and Motor Vehicle Safety Act (Safety Act). The Moving Ahead for Progress in the 21st Century Act (MAP–21) states that the Secretary of Transportation shall determine the amount of civil penalty or compromise under the Safety Act. MAP–21 identifies mandatory factors that the Secretary must consider and discretionary factors for the Secretary to consider as appropriate in making such determinations. MAP–21 directs NHTSA to issue a rule providing an interpretation of these penalty factors.

This final rule also amends NHTSA's regulation to the increase penalties and damages for odometer fraud, and to include the statutory penalty for knowingly and willfully submitting materially false or misleading information to the Secretary after certifying the same information as accurate.

In the NPRM, we proposed administrative procedures for NHTSA to follow when assessing civil penalties against persons who violate the Safety Act. We are not including those procedures in this final rule. Instead, NHTSA plans to address those procedures separately, in a rule to be issued soon.

DATES: *Effective date:* This final rule is effective May 2, 2016.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than April 15, 2016.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Ave. SE., West Building, W41–211, Washington, DC 20590. Telephone: (202) 366–2992 Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background and Summary of Notice of Proposed Rulemaking
  A. Background
  B. Civil Penalties Procedures in NPRM
  C. Civil Penalty Factors in the NPRM
III. The Final Rule
  A. General Penalty Factors
  B. Discretionary Penalty Factors
IV. Codification of Other MAP–21 Penalty Changes in 49 CFR Part 578
V. Rulemaking Analyses and Notices

I. Executive Summary

The Moving Ahead for Progress in the 21st Century Act (MAP–21 or the Act) was signed into law on July 6, 2012 (Pub. L. 112–141). Section 31203(a) of MAP–21 amends the civil penalty provision of the Safety Act, as amended and recodified, 49 U.S.C. Chapter 301, by requiring the Secretary of Transportation to consider various factors in determining the amount of a civil penalty or compromise. The factors that the Secretary shall consider in determining the amount of civil penalty or compromise are codified in amendments to 49 U.S.C. 30165(c). Section 31203(b) of MAP–21 requires the Secretary to issue a final rule, in accordance with 5 U.S.C. 553, providing an interpretation of the penalty factors set forth in MAP–21. Pub. L. 112–141, § 31203, 126 Stat. 758 (2012). This rule provides an interpretation of the civil penalty factors in 49 U.S.C. 30165(c) for NHTSA to consider in determining the amount of civil penalty or compromise.

NHTSA issued an NPRM that proposed an interpretation of the penalty factors in Section 31203(b) of MAP–21 on September 21, 2015.[1] The NPRM also included administrative procedures for NHTSA to follow when assessing civil penalties against persons who violate the Safety Act. We have decided not to include the administrative procedures for assessing civil penalties in this final rule.

On December 4, 2015, the Fixing America's Surface Transportation Act

[1] 80 FR 56944 (Sept. 21, 2015).

(FAST Act), Public Law 114–94, was signed into law. Section 24110 of the FAST Act requires NHTSA to issue a final rule providing an interpretation of the penalty factors in Section 31203(b) of MAP–21 in order for increases in the maximum amount of civil penalties that NHTSA can collect for violations of the Safety Act to become effective. When the Secretary of Transportation certifies that NHTSA has issued a final rule providing an interpretation of the factors in Section 31203(b) of MAP–21, the maximum amount of civil penalty for each violation of the Safety Act increases from $7,000 per violation to $21,000 per violation and the maximum amount of civil penalties that NHTSA can collect for a related series of violations increases from $35,000,000 to $105,000,000. This final rule satisfies the requirements in the FAST Act necessary for the increases in the maximum amount of civil penalties that NHTSA can collect for violations of the Safety Act to become effective.

II. Background and Summary of Notice of Proposed Rulemaking

A. Background

NHTSA historically has considered the gravity of the violation when compromising civil penalties. Consideration of the gravity of the violation has involved a variety of factors, depending on the case. The factors that NHTSA has considered have included the nature of the violation, the nature of a safety-related defect or noncompliance with Federal Motor Vehicle Safety Standards (''FMVSS''), the safety risk, the number of motor vehicles or items of motor vehicle equipment involved, the delay in submitting a defect and noncompliance information report, the information in the possession of the violator regarding the violation, other actions by the violator, and the relationship of the violation to the integrity and administration of the agency's programs.[2]

In the past, NHTSA also has considered the size of the violator when compromising civil penalties. With respect to civil penalties involving small businesses, among the factors that have been considered are the violator's ability to pay, including its ability to pay over time, and any effect on the violator's ability to continue to do business.

B. Civil Penalties Procedures in NPRM

The NPRM stated that Section 31203 of MAP–21confirmed that NHTSA, through the authority delegated from the Secretary of Transportation pursuant to 49 CFR 1.95, may impose civil penalties as well as compromise them. NHTSA stated that the Secretary's authority to impose civil penalties is confirmed by both the language and the legislative history of MAP–21. The NPRM also proposed administrative procedures for NHTSA to follow in exercising the Secretary's authority to impose civil penalties.

Given the passage of the FAST Act, and its requirements, NHTSA has decided to finalize the procedures for imposing civil penalties at a later time in order to allow NHTSA to issue the final rule providing an interpretation of the penalty factors in Section 31203 of MAP–21 in an expedited manner and to give the agency additional time to consider the comments it received regarding the administrative procedures. Issuing the final rule providing an interpretation of the penalty factors in MAP–21 in an expedited manner will allow NHTSA to more quickly enforce the increased maximum civil penalties in the FAST Act against violators of the Safety Act. Therefore, NHTSA has decided to include only the interpretation of the civil penalty factors in this final rule.

C. Civil Penalty Factors in the NPRM

The proposed interpretation of the penalty factors in MAP–21 was based on the language of the statute, informed by NHTSA's years of day-to-day enforcement experience, and the manner in which NHTSA has compromised penalties in the past. In the NPRM, we stated that MAP–21 included both general factors and nine discretionary factors for NHTSA to consider if appropriate. The NPRM provided an interpretation of the general and discretionary factors. For each of the nine discretionary penalty factors, we provided an explanation of NHTSA's proposed interpretation.

We received four comments regarding our proposed interpretation of the penalty factors in the NPRM.[3] Generally the commenters were supportive of NHTSA's proposed interpretation of the penalty factors. The commenters did comment on how the penalty factors should be applied and NHTSA's interpretation of some of the nine discretionary factors. All commenters submitted comments regarding how the agency should consider the ''knowledge of the person charged with the violation,'' when determining the amount of civil penalty or compromise. The comments are addressed below.

III. The Final Rule

The MAP–21 legislation set forth civil penalty factors to be considered by NHTSA in determining the amount of a civil penalty or compromise. The general provision in the amended section 30165(c) calls for consideration of the nature, circumstances, extent and gravity of the violation. The term ''violation'' refers to any violation addressed by 49 U.S.C. 30165(a)(1), (2), (3), or (4). The Secretary has the discretion to consider the totality of the circumstances surrounding a violation.

Comments

NADA stated that NHTSA should consult with the United States Department of Justice on the appropriateness of NHTSA's proposed penalty factors because the Department of Justice understands how these civil penalty factors should be applied in civil actions. NADA also stated that NHTSA's interpretation of the penalty factors should provide both positive and negative impacts that the factors may have on the amount of a civil penalty sought by NHTSA for violations of the Safety Act.

[2] *See, e.g.,* April 5, 2010 Demand Letter for TQ10–002 available at *ftp://ftp.nhtsa.dot.gov/TQ10-002/TQ10-002%20Resumes/TQ10-002%20Closing%20Resume/TQ10-002%20Sticky%20Pedal%20Demand%20Letter%204-5-10%20FINAL%20Signed.pdf* (In discussing the gravity of Toyota's apparent violations as severe and potentially life-threatening, the agency stated, ''Toyota determined that the accelerator pedals installed on a significant number of vehicles sold and leased in the United States contained a safety-related defect as evidenced by, among other things, its issuance of a Technical Instruction and production improvement information on September 29, 2009, in 31 countries across Europe. Toyota knew or should have known that the same or substantially similar accelerator pedals were installed on approximately 2.3 million vehicles sold or leased in the United States, and continued to sell and lease vehicles equipped with a defective accelerator pedal for months after this determination. Nonetheless, Toyota Motor Corporation affirmatively-and inexplicably-instructed Toyota Motor Engineering and Manufacturing North America, Inc. *not* to implement an Engineering Change Instruction in the U.S. market. Toyota gave this instruction despite the fact that it had issued similar or identical instructions in Canada and Europe and knew that the very same issues that prompted the European and Canadian actions existed on a significant number of vehicles in the United States. The result of these decisions by Toyota was to expose millions of American drivers, passengers and pedestrians to the dangers of driving with a defective accelerator pedal that could result, in Toyota's words, in 'sticky accelerator pedals, sudden rpm increase and/or sudden vehicle acceleration.'').

[3] We received comments regarding our proposed interpretation of the civil penalty factors in MAP–21 from Advocates for Highway and Auto Safety (''Advocates''), the Association of Global Automakers, Inc. (''Global''), the Alliance of Automobile Manufacturers (''the Alliance''), and the National Automobile Dealers Association (''NADA'').

Agency Response

MAP–21 directs NHTSA, by delegation from the Secretary of Transportation, to issue a rule providing an interpretation of the civil penalty factors to consider in determining the amount of civil penalty or compromise. As we stated in the NPRM, NHTSA, through delegation from the Secretary, has the authority to assess and compromise civil penalties.

NHTSA has addressed this comment because it works closely with the Justice Department on a range of civil and criminal enforcement matters. NHTSA's interpretation of the civil penalty factors is based on its day-to-day enforcement experience and previous experience compromising civil penalties for violations of the Safety Act, which includes its experience and counsel from the Justice Department. This is more than sufficient to provide the interpretation of the penalty factors in this final rule.

NHTSA believes the interpretation of the penalty factors in this final rule provides both aggravating and mitigating factors and that the interpretation will provide useful information to manufacturers regarding actions that will help them avoid civil penalties.

A. General Penalty Factors

In the NPRM, NHTSA proposed to interpret the nature of the violation to mean the essential, fundamental character or constitution of the violation.[4] This includes, but is not limited to, the nature of the defect (in a case involving a safety-related defect) or noncompliance. It also includes what the violation involves, for example, a violation of the Early Warning Reporting (''EWR'') requirements, the failure to provide timely notification of a safety-related defect or noncompliance, the failure to remedy, the lack of a reasonable basis for certification to the FMVSS, the sale of unremedied vehicles, or the failure to respond fully and timely to a request issued under 49 U.S.C. 30166.

Second, we proposed to interpret the circumstances of the violation to mean the context, facts, and conditions having bearing on the violation.[5] This includes whether the manufacturer has been recalcitrant or shown disregard for its obligations under the Safety Act.

Third, we proposed to interpret the extent of the violation to mean the range of inclusiveness over which the violation extends including the scope, time frame, and/or the degree of the violation.[6] This includes the number of violations and whether the violations are related or unrelated.

Finally, we proposed to interpret the gravity of the violation to mean the importance, significance, and/or seriousness of the violation.[7]

Comments

Global asserts that a good faith disagreement over whether a safety defect exists should not be used to show that a manufacturer has been recalcitrant or shown disregard for its Safety Act obligations.

Agency Response

A disagreement over whether a defect exists, even one in good faith, is not a mitigating factor in a civil penalty case, and Global's comments do not support otherwise. Manufacturers are aware that if they oppose NHTSA's request to conduct a recall because they disagree with NHTSA over the existence of a defect or non-compliance, they are at risk of civil penalties.[8] Therefore, because we do not believe that disagreement over whether a defect exists is a mitigating factor regarding a manufacturer's liability for civil penalties and because we did not receive any other comments regarding the general factors, we are adopting the interpretation proposed in the NPRM.

B. Discretionary Penalty Factors

In the NPRM, we stated that the penalty factors listed in 49 U.S.C. 30165(c)(1) through (9) are discretionary factors that NHTSA may apply in determining the amount of civil penalty or compromise.

Comments

Global asserts that the nine factors listed in 49 U.S.C. 30165(c)(1)–(9) are mandatory and each factor must be considered by NHTSA if the factor is raised by a person subject to civil penalties for violations of the Safety Act. Global claims that the phrase ''determination shall include'' indicates the nine penalty factors are mandatory, not discretionary.

Agency Response

NHTSA continues to hold the position that the nine factors listed in 49 U.S.C. 30165(c)(1)–(9) are discretionary and Global's comments, and the record in this rulemaking, do not suggest otherwise. MAP–21 states that NHTSA's ''determination shall include, as appropriate'' the nine factors. NHTSA contends that by including the words ''as appropriate,'' Congress intended to provide NHTSA the discretion to determine which of the nine factors are relevant to a particular civil penalty case otherwise the phase ''as appropriate'' would be superfluous.[9] Thus, the final rule continues to state that the nine factors in 49 U.S.C. 30165(c)(1)–(9) are discretionary.

1. The Nature of the Defect or Noncompliance

We proposed to interpret ''the nature of the defect or noncompliance,'' 49 U.S.C. 30165(c)(1), to mean the essential, fundamental characteristic or constitution of the safety-related defect or noncompliance. This is consistent with the dictionary definition of ''nature.'' [10] ''Defect'' is defined at 49 U.S.C. 30102(a)(2) as including ''any defect in performance, construction, a component, or material or a motor vehicle or motor vehicle equipment.'' ''Noncompliance'' under this statutory factor includes a noncompliance with an FMVSS, as well as other violations subject to penalties under 49 U.S.C. 30165. Noncompliance may include, but is not limited to, noncompliance(s) with the FMVSS; the manufacture, sale, or importation of noncomplying motor vehicles and equipment or defective vehicles or equipment covered by a notice or order regarding the defect; failure to certify or have a reasonable

[4] *See e.g. Webster's Third New International Dictionary Unabridged,* 1507 (defining nature as ''the essential character or constitution of something''); *Black's Law Dictionary* (10th ed. 2014) (defining nature as ''[a] fundamental quality that distinguishes one thing from another; the essence of something.'').

[5] *See e.g. Ehlert* v. *United States,* 422 F.2d 332, 335 (9th Cir. 1970) (Duniway, J. concurring) (stating that Webster's New International Dictionary, 2d ed. defines ''circumstances'' as ''conditions under which an act or event takes place or with respect to which a fact is determined.'').

[6] *See e.g. Webster's Third New International Dictionary Unabridged,* 805 (defining extent as the ''range (as of inclusiveness or application) over which something extends.'').

[7] *See e.g. Black's Law Dictionary* (10th ed. 2014) (defining ''gravity'' as ''[s]eriousness of harm, an offense, etc., as judged from an objective, legal standpoint.''); *Webster's Third New International Dictionary Unabridged,* 993 (defining gravity as the importance, significance, or seriousness).

[8] *See United States* v. *General Motors Corp.,* 565 F.2d 754, 760–61 (D.C. Cir. 1977) (''One who refuses to pay when the law requires that he shall, acts at his peril, in the sense that he must be held to the acceptance of any lawful consequences attached to the refusal. It is no answer in such circumstances that he has acted in good faith.'').

[9] *Clark* v. *Rameker,* 134 S. Ct. 2242, 2248 (2014) (stating that ''a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous'').

[10] *See e.g. Webster's Third New International Dictionary Unabridged,* 1507 (defining nature as ''the essential character or constitution of something''); *Black's Law Dictionary* (9th ed. 2009) (defining nature as ''[a] fundamental quality that distinguishes one thing from another; the essence of something.'').

basis to certify that a motor vehicle or item of motor vehicle equipment complies with applicable motor vehicle safety standards; failure to maintain records as required; failure to provide timely notification of defects and noncompliances with the FMVSS; failure to follow the notification procedures set forth in 49 U.S.C. 30119 and regulations prescribed thereunder; failure to remedy defects and noncompliances pursuant to 49 U.S.C. 30120 and regulations prescribed thereunder; making safety devices and elements inoperative; failure to comply with regulations relating to school buses and school bus equipment; failure to comply with Early Warning Reporting requirements; and/or the failure to respond to an information request, Special Order, General Order, subpoena or other required reports.[11]

When considering the nature of a safety-related defect or noncompliance with an FMVSS in a motor vehicle or motor vehicle equipment, NHTSA may examine the conditions or circumstances under which the defect or noncompliance arises, the performance problem, and actual and probable consequences of the defect or noncompliance. When considering the nature of the noncompliance with the Safety Act or a regulation promulgated thereunder, NHTSA may examine the circumstances surrounding the violation.

For example, NHTSA has a process by which a manufacturer can petition for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 on the basis that a noncompliance is inconsequential to motor vehicle safety. 49 U.S.C. 30118(d) and 30120(h), 49 CFR part 556. In the NPRM we stated that if a petition for inconsequential noncompliance is granted, then it could serve as mitigation under this factor.

Comments

The Alliance asserts that the fact that a non-compliance is inconsequential to motor vehicle safety should not be a mitigating factor in determining the amount of a civil penalty. The Alliance believes that an inconsequential non-compliance should never be the subject of a civil penalty proceeding.

NADA asserts that considering the nature of a defect or non-compliance involves weighing the relative seriousness of the defect or non-compliance. NADA believes that not all defects and non-compliances have the same significance to safety.

[11] The foregoing list is intended to be illustrative only, and is not exhaustive.

Agency Response

As a general matter, it is unlikely that NHTSA would grant a petition for inconsequential noncompliance and then seek a civil penalty for a violation of the Safety Act. However, NHTSA believes such a situation would be an example of a situation with a lower degree of seriousness, where reduced civil penalties would be appropriate.

As stated in the NPRM, when considering the nature of a defect or noncompliance NHTSA will consider the conditions or circumstances under which the defect or noncompliance arises, the performance problem, and actual and probable consequences of the defect or noncompliance. We believe that these factors will give an indication of the seriousness of the defect or noncompliance. Therefore, no changes to the final rule are necessary in response to NADA's comment.

2. Knowledge by the Respondent of Its Obligations Under This Chapter

In the NPRM, we proposed to interpret the ''knowledge by the . . . [respondent] of its obligations under this chapter,'' 49 U.S.C. 30165(c)(2), as all knowledge, legal and factual, actual, presumed and constructive, of the respondent of its obligations under 49 U.S.C. Chapter 301. We proposed that if a respondent is other than an individual, including but not limited to a corporation or a partnership, then the knowledge of an employee or employees of that non-natural person be imputed to that non-natural person. We proposed to interpret the knowledge of an agent as being imputed to a principal. We proposed that a non-natural person, such as a corporation, with multiple employees will be charged with the knowledge of each employee, regardless of whether the employees have communicated that knowledge among each other or to a decision maker for the non-natural person.

We stated in the NPRM, that under this proposed interpretation of ''knowledge,'' delays resulting from, or caused by, a manufacturer's internal reporting processes would not excuse a manufacturer's failure to report a defect or noncompliance to NHTSA. We stated that NHTSA may examine such factors as whether the respondent began producing parts to remedy a particular defect or noncompliance with an FMVSS prior to reporting the defect or noncompliance with an FMVSS to NHTSA. NHTSA may also consider communication between the respondent (*e.g.* a manufacturer) and other entities such as dealers and owners in determining its knowledge of a violation. NHTSA may consider the information NHTSA provided to the respondent, including notification of apparent noncompliance, information on the recall process, information on governing regulations, and information on consequences of failure to comply with regulatory requirements. NHTSA may also consider whether the respondent has been proactive in discerning other potential safety issues, and whether it has attempted to mislead the agency or conceal its full information, including its knowledge of a defect or noncompliance.

Comments

Advocates supports NHTSA proposal that knowledge of employees be attributed to the corporation regardless of whether employees have communicated such knowledge to the corporation.

The Alliance does not believe that it is reasonable to input the knowledge of employees to the corporation in determining whether a manufacturer fulfilled its regulatory obligations in a timely matter. The Alliance states that manufacturers must be allowed to follow reasonable processes for processing information and given time to conduct internal investigations. Therefore, in evaluating whether a company fulfilled its regulatory obligations, NHTSA should evaluate the reasonableness of the company's internal business process for, and the circumstances of, each matter at issue.

Global states that there are circumstances when the knowledge of employees should not be attributed to the corporation such as when an employee acts illegally or against corporate policy. The extent to which a manufacturer has received or not received appropriate information from the supply chain should be a mitigating factor. Global does not believe that production of parts or communications to the field should automatically suggest knowledge of a safety defect because a manufacturer may initiate these activities while still investigating whether the issue is a safety defect. Global also believes that legitimate misunderstanding of laws and regulations should be a mitigating factor.

NADA believes that NHTSA should take into account the fact that a person's lack of knowledge may be excusable.

Agency Response

NHTSA agrees that in instances in which the significance of a piece of information, by itself, would not necessarily establish a defect or noncompliance, an individual

employee's knowledge of this information is less relevant than the corporation's processes for gathering information and communicating it to decision makers within the company. NHTSA agrees with the Alliance that in assessing the knowledge of a corporation, NHTSA should assess the corporation's process for gathering information in support of internal investigations of potential safety issues and making decisions regarding defects and noncompliances. In making such an assessment, NHTSA will consider whether the corporation's processes are designed to gather information and provide it to decision makers in a timely manner, whether employees are trained on these processes and how to follow them, whether the corporation conducts periodic reviews of its processes to ensure that its employees are following the processes, and whether the process was followed in the instance of the violation of the Safety Act that gave rise to the civil penalty case at hand.

NHTSA believes that there are cases in which it is appropriate to impute knowledge to the corporation when an employee has acted illegally or against corporate policy. Whether NHTSA attributes the illegal or unauthorized actions of employees to the corporation will depend on the employee's position within the company, the degree to which the corporation monitored for illegal or unauthorized activity by employees, the degree to which employees were made aware of their regulatory responsibilities, and the seriousness of the defect or noncompliance at issue.

NHTSA agrees with Global that in assessing the knowledge of a corporation NHTSA should consider the information that a corporation received from the supply chain. This includes the extent to which the corporation has policies that require suppliers to make information available and the extent that it monitors suppliers' compliance with these policies.

NHTSA believes that ordering or producing replacement parts and communications to the field can show that a manufacturer had knowledge of a defect or noncompliance. Whether this fact, by itself, is dispositive of a corporation's knowledge of a defect or noncompliance will depend on the other actions taken by a corporation to investigate a defect or noncompliance and the timing of those actions.

A corporation's misunderstanding of its regulatory responsibilities will rarely be a mitigating factor in a civil penalty case. In the NPRM, however, NHTSA did state that it would consider whether an entity was a new manufacturer in assessing the entity's knowledge. In the case of a new manufacturer, a corporation's misunderstanding regarding its regulatory responsibilities could be a mitigating factor, depending on the circumstances.

In view of the comments, and on this record, NHTSA is amending the language in the final rule to clarify that the agency has the discretion to attribute knowledge of employees to the corporation when appropriate but is not required to do so.

3. The Severity of the Risk of Injury

We proposed to interpret the ''severity of the risk of injury,'' 49 U.S.C. 30165(c)(3), as the gravity of exposure to potential injury, including the potential for injury or death of drivers, passengers, other motorists, pedestrians and others. The severity of the risk includes the likelihood of an injury occurring and the population group exposed to that risk. We stated that the severity of the risk of injury may depend on the component of a motor vehicle that is defective or noncompliant with an FMVSS.

Comments

Global believes that the absence of injuries should be considered a mitigating factor in severity of the risk of injury. NADA believes that when considering ''the severity of the risk of injury'' of a violation of the Safety Act, NHTSA should take into account whether the violation is likely to cause a crash that could lead to an injury or death versus whether the violation is likely to lead to an increase in the likelihood of injury or death should a crash occur (crash causation versus reduced injury/death prevention.

Agency Response

NHTSA disagrees that the absence of injury should be a mitigating factor when considering the risk of injury. NHTSA believes that it is possible, especially in the case of a defect or noncompliance in a small number of vehicles, for the risk of injury from a defect or noncompliance to be high even if the defect or noncompliance has not yet caused any injuries, and no commenter provided credible evidence, or applicable law, to suggest otherwise.

NHTSA does not believe that it would be appropriate, when considering the risk of injury caused by a defect or noncompliance, to differentiate on the basis of whether a defect or noncompliance increases the risk of a crash versus whether the defect or noncompliance increases the likelihood that a death or injury will occur as a result of a crash. NHTSA contends that both types of defects or non-compliances have the potential to be equally severe. After considering the comments we have decided to finalize the proposed interpretation of this factor.

4. The Occurrence or Absence of Injury

NHTSA proposed to interpret ''the occurrence or absence of injury,'' 49 U.S.C. 30165(c)(4), as whether injuries or deaths have occurred as a result of a defect, noncompliance, or other violation of the Safety Act or implementing regulations. NHTSA proposed also to consider allegations of death or injury. When appropriate, NHTSA may consider deaths or injuries that are alleged to have occurred as a result of a defect, noncompliance, or other violation of the Safety Act or implementing regulations regardless of whether NHTSA has been able to establish that the defect, noncompliance, or violation was the definitive cause of the death or injury.

In evaluating this factor, it is important to emphasize that the absence of deaths or injuries is not dispositive of the existence of a defect or noncompliance or a person's liability for civil penalties.

Advocates supports the agency's proposal that the absence of death or injury is not dispositive of the existence of defect or liability for civil penalties. In light of the comments we received regarding this factor, we are finalizing the proposed interpretation.

5. The Number of Motor Vehicles or Items of Motor Vehicle Equipment Distributed With the Defect or Noncompliance

NHTSA proposed to interpret ''the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance,'' 49 U.S.C. 30165(c)(5), as referring to the total number of vehicles or items of motor vehicle equipment distributed with the defect or noncompliance with an FMVSS, or the percentage of the vehicles or items of motor vehicle equipment of the subject population with the defect or noncompliance with an FMVSS. We proposed that NHTSA may look not only at absolute numbers of motor vehicles or items of motor vehicle equipment. Rather it may also take into account the portion of a vehicle or equipment population with the defect, noncompliance, or other violation. In applying this factor, NHTSA may also consider the portion of motor vehicles that contain the defect or noncompliance with an FMVSS as a percentage of the manufacturer's total annual production of vehicles if

multiple make, model and model years of motor vehicles are affected by the defect or noncompliance with an FMVSS.

Further, we proposed that NHTSA may choose to make a distinction between those defective or noncompliant products distributed in commerce that consumers received, and those defective or noncompliant products distributed in commerce that consumers have not received.

We did not receive any comments regarding our proposed interpretation of this factor so we are finalizing the proposed interpretation of this factor.

6. Actions Taken by the Respondent To Identify, Investigate, or Mitigate the Condition

In the NPRM, NHTSA proposed to interpret ''actions taken by the . . . [respondent] to identify, investigate, or mitigate the condition,'' 49 U.S.C. 30165(c)(6), as actions actually taken, the time frame when those actions were taken, what those actions involved and how they ameliorated or otherwise related to the condition, what remained after those actions were taken, and the speed with which the actions were taken. NHTSA proposed that in assessing a respondent's ''actions,'' a failure to act may also be considered.

We stated that, under this factor, NHTSA may consider whether the respondent has been diligent in endeavoring to meet the requirements of the Safety Act and regulations thereunder, including whether it has set up processes to facilitate timely and accurate reporting, and whether it has audited such systems. NHTSA may also take into account the investigative activities the respondent has undertaken relating to the scope of the issues identified by NHTSA. The agency may also consider whether the respondent delayed in reporting a safety-related defect or a noncompliance with an FMVSS (a person is required to file a 49 CFR part 573 report not more than five working days after a person knew or should have known of the safety-related defect or noncompliance with an FMVSS). NHTSA may also consider whether the respondent remedied the safety-related defect or noncompliance with an FMVSS in a timely manner. For instance, NHTSA may consider whether a recall remedy is adequate, whether a new safety-related defect or noncompliance with an FMVSS arose from an inadequate recall remedy, and whether the scope of a recall was adequate. NHTSA may also consider the timeliness and adequacy of the respondent's communications with owners and dealers.

Comments

Global believes that a manufacturer's internal procedures should be considered when considering ''actions taken to identify investigate, or mitigate the condition.''

Agency Response

As stated above, when considering the actions taken by the respondent, NHTSA may consider whether the respondent has set up systems to facilitate timely and accurate reporting, and whether it has audited such systems. NHTSA also stated that when considering the knowledge of the respondent, it will consider whether employees have been trained on those systems, and whether those systems were followed. It is equally appropriate to consider the aforementioned factors when assessing the actions taken to by the respondent to identify, investigate or mitigate the defect or noncompliance. Therefore, NHTSA has revising the proposed rule to make clear that we will consider a corporation's internal processes for reporting information to NHTSA and investigating potential safety issues under this factor.

7. The Appropriateness of Such Penalty in Relation to the Size of the Business of the Respondent, Including the Potential for Undue Adverse Economic Impacts

NHTSA takes the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) into account prior to setting any final penalty amount.[12] This policy will continue in light of the MAP–21 amendments to 49 U.S.C. 30165(c).

Upon a showing by a violator that it is a small entity, NHTSA will make appropriate adjustments to the proposed penalty or settlement amount (although certain exceptions may apply).[13] If the respondent asserts it is a ''small business,'' NHTSA expects the respondent to provide the supporting documentation. Under the Small Business Administration's standards, an entity is considered ''small'' if it is independently owned and operated and is not dominant in its field of operation,[14] or if its number of employees or the dollar volume of its business does not exceed specific thresholds.[15] For example, 13 CFR Section 121.201 specifically identifies as ''small entities'' manufacturers of motor vehicles, passenger car bodies, and motor homes that employ 1,000 people or less, manufacturers of motor vehicle parts and accessories that employ 750 people or less, automobile and tire wholesalers that employ 100 people or less, new car dealers that employ 200 people or less and automotive parts and accessory stores with annual receipts less than $15 million.

We proposed to interpret ''potential for undue adverse economic impacts,'' 49 U.S.C. 30165(c)(7), as the possibility that payment of a civil penalty amount would affect the ability of the respondent to continue to operate. We also stated that NHTSA may consider a respondent's ability to pay, including in installments over time, and any effect of a penalty on that person's ability to continue to do business. The ability of a business to pay a penalty is not dictated by its size. In some cases for small businesses, however, these two considerations may relate to one another. NHTSA also may consider relevant financial factors such as capitalization, liquidity, solvency, and profitability to determine a small business' ability to pay a penalty. NHTSA may also consider whether the business has been deliberately undercapitalized. The burden to present sufficient evidence relating to a charged business' size and ability to pay rests on that business. More generally, in cases where the respondent claims that it is financially unable to pay the civil penalty or that the penalty would have undue adverse economic impacts, the burden of proof is on the respondent. In the case of closely-held or privately-held companies, NHTSA may provide the respondent the opportunity to submit personal financial documentation for consideration.

Comments

Advocates supports the agency's proposal that the respondent is responsible for establishing the severity of the impact of the financial penalty.

Global believes that NHTSA's proposed factor for considering undue adverse economic impacts only reflects the most extreme economic impacts. Global believes that for cases involving less severe violations, NHTSA should consider economic hardship to the company's competitive position caused by a civil penalty.

Agency Response

NHTSA believes that for less severe violations consideration of other factors under 49 U.S.C. 30165(c) will reduce the amount of potential penalty and also the financial impact of the penalty. For

[12] *See* NHTSA, Civil Penalty Policy Under the Small Business Regulatory Enforcement Fairness Act, 62 FR 37115 (July 10, 1997).

[13] *Id.* at 37117.

[14] *Id.* at 37115.

[15] *Id.*

less serve violations, NHTSA will also still consider whether the company should be permitted to pay the civil penalty over time. For these reasons, we are adopting the proposed interpretation of this factor in the NPRM without changes.

8. Whether the Respondent Has Been Assessed Civil Penalties Under This Section During the Most Recent 5 Years

We proposed to interpret ''whether the [respondent] has been assessed civil penalties under this section during the most recent 5 years,'' 49 U.S.C. 30165(c)(8), as including an assessment of civil penalties, a settlement agreement containing a penalty, or a consent order or a lawsuit involving a penalty or payment of a civil penalty in the most recent 5 years from the date of the alleged violation, regardless of whether there was any admission of a violation or of liability under 49 U.S.C. 30165.

Comment

Advocates believes that repeated violations of the Safety Act merit the imposition of the maximum fine permitted by law.

Global requests that NHTSA consider the significance of previous violations of the Safety Act and whether previous violations are related to the violation at issue. Global believes that in some instances prior penalties many have no bearing on whether an enhanced penalty should be imposed.

Agency Response

NHTSA believes that repeated violations of the Safety Act, even if they are unrelated, can be indicative of a company's failure to foster a culture of safety and compliance. Therefore, NHTSA will continue to take into account all previous civil penalties paid by a company in the last five years regardless of whether they are related to the present violation giving rise to liability for civil penalties.

9. Other Appropriate Factors

We proposed to interpret other appropriate factors as factors not specifically identified in Section 31203(a) of MAP–21 which are appropriately considered, including both aggravating and mitigating factors.

Such factors may include, but are not limited to:

a. A history of violations. NHTSA may increase penalties for repeated violations of the Safety Act or implementing regulations, or for a pattern or practice of violations.

b. An economic gain from the violation. NHTSA may consider whether the respondent benefitted economically from a violation, including a delay in complying with the Safety Act, a failure to comply with the Safety Act, or a delay or failure to comply with the regulations thereunder.

c. Effect of the respondent's conduct on the integrity of programs administered by NHTSA. The Agency's programs depend in large part on timely and accurate reporting and certification by manufacturers. Therefore, NHTSA may consider whether a person has been forthright with the Agency. NHTSA may also consider whether a person has attempted to mislead the Agency or conceal relevant information. For instance, NHTSA may consider whether a manufacturer has provided accurate and timely statements consistent with its Early Warning Reporting obligations. NHTSA may also consider whether a registered importer has provided accurate conformity packages and/or other information consistent with 49 U.S.C. 30141–30147 and the implementing regulations.

d. Responding to requests for information or remedial action. NHTSA may consider a person's failure to respond in a timely and complete fashion to requests from NHTSA for information or for remedial action. NHTSA may also consider whether the agency needed to make multiple requests to receive requested information.

Comments

NADA stated that under this factor NHTSA should include potential penalty waivers for first time violators and consider the speed with which a person who has violated the Safety Act acts to remedy the violation.

Agency Response

NHTSA does not believe that it would be appropriate to establish penalty waivers for first time violators in the contest of this rulemaking. Often when NHTSA seeks a civil penalty from an entity for the first time, it is because a significant violation has occurred or because the entity has exhibited a pattern of repeated violations.

NHTSA will consider the speed with which a violator has acted to remedy a violation when considering an entity's response to a request for remedial action from NHTSA.

IV. Codification of Other MAP–21 Penalty Changes in 49 CFR Part 578

MAP–21 increased the penalties and damages for odometer fraud. MAP–21 31206, 126 Stat. 761. MAP–21 also established civil penalties for violations of corporate responsibility provisions in 49 U.S.C. 30166 of $5,000 per day and a maximum penalty of $1,000,000. MAP–21 31304(b), 126 Stat. 764. These new penalties and increased penalties and damages are all currently in effect. NHTSA is amending its penalty regulation, 49 CFR 578.6, to conform it to the MAP–21 amendments.

V. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action provides an interpretation for how NHTSA will apply the civil penalty factors in 49 U.S.C. 30165. Because this rulemaking only seeks to explain the process by which the agency determines and resolves civil penalties and does not change the number of entities subject to civil penalties, the impacts of the rule are limited. Therefore, this rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule is not expected to have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments almost exclusively affect manufacturers of motor vehicles and motor vehicle equipment.

SBA uses size standards based on the North American Industry Classification System (''NAICS''), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 100 and 750 employees.

For example, according to the SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, and vehicular lighting equipment, qualify as small businesses if they employ 500 or fewer employees. Many small businesses are subject to the penalty provisions of 49 U.S.C. 30165 and therefore may be in some way

affected by the civil penalty factors in this final rule. However, the impacts of this rulemaking on small businesses are minimal, as NHTSA will continue to consider the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[16]

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule would not materially affect our civil penalty policy toward small businesses. Because NHTSA will continue to consider SBREFA and consider the business' size including the potential that a civil penalty would have undue adverse economic impacts on a small business before assessing or compromising a civil penalty, the impacts of this rulemaking on small businesses are minimal.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This rule generally would apply to private motor vehicle and motor vehicle equipment manufacturers (including importers), entities that sell motor vehicles and equipment and motor vehicle repair businesses. Thus, Executive Order 13132 is not implicated and consultation with State and local officials is not required.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rulemaking would not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

The rule lists the mandatory and discretionary factors for NHTSA to consider when determining the amount of civil penalty or compromise. This rule would not have retroactive effect.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 578

Administrative practice and procedure, Motor vehicles, Motor vehicle safety, Imports, Rubber and rubber products, Penalties, Tires.

Regulatory Text

For the reasons set forth in the preamble, NHTSA amends 49 CFR part 578 as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for part 578 is revised to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 112–141, 49 U.S.C. 322, 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, and 33115 as amended; delegation of authority at 49 CFR 1.81 and 1.95.

■ 2. Revise §§ 578.1, 578.2 and 578.3 to read as follows:

§ 578.1 Scope

This part specifies the civil penalties for violations of statutes and regulations administered by the National Highway Traffic Safety Administration (NHTSA), as adjusted for inflation. This part also sets forth NHTSA's interpretation of the civil penalty factors listed in 49 U.S.C. 30165(c). In addition, this part sets forth the requirements regarding the reasonable time and the manner of correction for a person seeking safe harbor protection from criminal liability under 49 U.S.C. 30170(a).

§ 578.2 Purpose.

One purpose of this part is to effectuate the remedial impact of civil penalties and to foster compliance with the law by specifying the civil penalties for statutory and regulatory violations, as adjusted for inflation. Another purpose of this part is to set forth NHTSA's interpretation of the civil penalty factors listed in 49 U.S.C. 30165(c). A third purpose of this part is to set forth the requirements regarding the reasonable time and the manner of correction for a person seeking safe harbor protection from criminal liability under 49 U.S.C. 30170(a).

[16] *See* NHTSA, Civil Penalty Policy Under the Small Business Regulatory Enforcement Fairness Act, 62 FR 37115 (July 10, 1997).

§ 578.3 Applicability.

This part applies to civil penalties for violations of Chapters 301, 305, 323, 325, 327, 329, and 331 of Title 49 of the United States Code or a regulation prescribed thereunder. This part applies to civil penalty factors under section 30165(c) of Title 49 of the United States Code. This part also applies to the criminal penalty safe harbor provision of section 30170 of Title 49 of the United States Code.

■ 3. Amend § 578.4 by adding in alphabetical order definitions of ''person'' and ''respondent'' to read as follows:

§ 578.4 Definitions.

* * * * *

Person means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.

Respondent means any person charged with liability for a civil penalty for a violation of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, 30141 through 30147, or 30166 of Title 49 of the United States Code or a regulation prescribed under any of those sections.

■ 4. Amend § 578.6 by adding paragraph (a)(4) and revising paragraph (f) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(4) *Section 30166(o).* A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same as accurate under the process established pursuant to section 30166(o), shall be subject to a civil penalty of not more than $5,000 per day. The maximum penalty under this paragraph for a related series of daily violations is $1,000,000.

* * * * *

(f) *Odometer tampering and disclosure.* (1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is $1,000,000.

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or $10,000, whichever is greater.

* * * * *

■ 5. Add § 578.8 to read as follows:

§ 578.8 Civil penalty factors under 49 U.S.C. Chapter 301.

(a) General civil penalty factors. This subsection interprets the terms nature, circumstances, extent, and gravity of the violation consistent with the factors in 49 U.S.C. 30165(c).

(1) *Nature of the violation* means the essential, fundamental character or constitution of the violation. It includes but is not limited to the nature of a safety-related defect or noncompliance. It also includes what the violation involves.

(2) *Circumstances of the violation* means the context, facts, and conditions having bearing on the violation.

(3) *Extent of the violation* means the range of inclusiveness over which the violation extends including the scope, time frame and/or the degree of the violation. This includes the number of violations and whether the violations are related or unrelated.

(4) *Gravity of the violation* means the importance, significance, and/or seriousness of the violation.

(b) Discretionary civil penalty factors. Paragraph (b) of this section interprets the nine discretionary factors in 49 U.S.C. 30165(c)(1) through (9) that NHTSA may apply in making civil penalty amount determinations.

(1) *The nature of the defect or noncompliance* means the essential, fundamental characteristic or constitution of the defect or noncompliance. ''Defect'' is as defined in 49 U.S.C. 30102(a)(2). ''Noncompliance'' under this factor includes a noncompliance with a Federal Motor Vehicle Safety Standard (''FMVSS''), as well as other violations subject to penalties under 49 U.S.C. 30165. When considering the nature of a safety-related defect or noncompliance with an FMVSS, NHTSA may examine the conditions or circumstances under which the defect or noncompliance arises, the performance problem, and actual and probable consequences of the defect or noncompliance. When considering the nature of the noncompliance with the Safety Act or a regulation promulgated thereunder, NHTSA may also examine the circumstances surrounding the violation.

(2) *Knowledge by the respondent of its obligations under this chapter* means all knowledge, legal and factual, actual, presumed and constructive, of the respondent of its obligations under 49 U.S.C. Chapter 301. If a respondent is other than a natural person, including but not limited to a corporation or a partnership, then the knowledge of an employee or employees of that non-natural person may be imputed to that non-natural person. The knowledge of an agent may be imputed to a principal. A person, such as a corporation, with multiple employees may be charged with the knowledge of each employee, regardless of whether the employees have communicated that knowledge among each other, or to a decision maker for the non-natural person.

(3) *The severity of the risk of injury* means the gravity of exposure to potential injury and includes the potential for injury or death of drivers, passengers, other motorists, pedestrians, and others. The severity of the risk includes the likelihood of an injury occurring and the population group exposed.

(4) *The occurrence or absence of injury* means whether injuries or deaths have occurred as a result of a defect, noncompliance, or other violation of 49 U.S.C. Chapter 301 or Chapter 5 of Title 49 of the Code of Federal Regulations. NHTSA may also take into consideration allegations of death or injury. The absence of deaths or injuries shall not be dispositive of manufacturer's liability for civil penalties.

(5) *The number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance* means the total number of vehicles or items of motor vehicle equipment distributed with the defect or noncompliance with an FMVSS or the percentage of vehicles or items of motor vehicle equipment of the subject population with the defect or noncompliance with an FMVSS. If multiple make, model and model years of motor vehicles are affected by the defect or noncompliance with an FMVSS, NHTSA may also consider the percentage of motor vehicles that contain the defect or noncompliance with an FMVSS as a percentage of the manufacturer's total annual production of vehicles. NHTSA may choose to make distinction between those defective or noncompliant products distributed in commerce that consumers received, and those defective or noncompliant products distributed in commerce that consumers have not received.

(6) *Actions taken by the respondent to identify, investigate, or mitigate the condition* means actions actually taken, the time frame when those actions were taken, what those actions involved and how they ameliorated or otherwise related to the condition, what remained after those actions were taken, and the

speed with which the actions were taken. A failure to act may also be considered. NHTSA may also consider whether the respondent has set up processes to facilitate timely and accurate reporting and timely investigation of potential safety issues, whether it has audited such processes, whether it has provided training to employees on the processes, and whether such processes were followed.

(7) *The appropriateness of such penalty in relation to the size of the business of the respondent, including the potential for undue adverse economic impacts.* NHTSA takes the Small Business Regulatory Enforcement Fairness Act of 1996 into account. Upon a showing that a violator is a small entity, NHTSA may include, but is not limited to, requiring the small entity to correct the violation within a reasonable correction period, considering whether the violation was discovered through the participation by the small entity in a compliance assistance program sponsored by the agency, considering whether the small entity has been subject to multiple enforcement actions by the agency, considering whether the violations involve willful or criminal conduct, considering whether the violations pose serious health, safety or environmental threats, and requiring a good faith effort to comply with the law. NHTSA may also consider the effect of the penalty on ability of the person to continue to operate. NHTSA may consider a person's ability to pay, including in installments over time, any effect of a penalty on the respondent's ability to continue to do business, and relevant financial factors such as liquidity, solvency, and profitability. NHTSA may also consider whether the business has been deliberately undercapitalized.

(8) *Whether the respondent has been assessed civil penalties under this section during the most recent 5 years* means whether the respondent has been assessed civil penalties, including a settlement agreement containing a penalty, a consent order or a lawsuit involving a penalty or payment of a civil penalty in the most recent 5 years from the date of the alleged violation, regardless of whether there was any admission of a violation or of liability, under 49 U.S.C. 30165.

(9) *Other appropriate factors* means other factors not identified above, including but not limited to aggravating and mitigating factors relating to the violation, such as whether there is a history of violations, whether a person benefitted economically from a violation, the effect of the respondent's conduct on the integrity of programs administered by NHTSA, and whether there was a failure to respond in a complete and timely manner to requests for information or remedial action.

Issued in Washington, DC on February 17, 2016 under authority delegated pursuant to 49 CFR 1.95.

Mark R. Rosekind,

Administrator.

[FR Doc. 2016–04311 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 81, No. 40
Tuesday, March 1, 2016

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AB24

Reauthorization of the United States Grain Standards Act; Extension of Comment Period; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule; extension of comment period published by the Grain Inspection, Packers and Stockyards Administration (GIPSA) in the **Federal Register** of February 24, 2016, regarding (GIPSA) proposal to revise existing regulations and add new regulations under the United States Grain Standards Act (USGSA), as amended, in order to comply with amendments to the USGSA made by the Agriculture Reauthorization Act of 2015. In the **SUPPLEMENTARY INFORMATION** section the extension period to comment for 30 days is incorrect.

DATES: Effective March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll, (202) 720–8286.

Correction

In proposed rule FR Doc. 2016–03863, published on February 24, 2016, 81 FR 9122, make the following correction. On page 9122, in the **SUPPLEMENTARY INFORMATION** section, the last sentence is revised to read as follows:

''In response to requests from several interested groups, GIPSA has decided to extend the comment period for 60 days.''

Dated: February 24, 2016.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–04458 Filed 2–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[Document Number AMS–SC–15–0072]

Christmas Tree Promotion, Research, and Information Order; Late Payment and Interest Charges on Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on prescribing late payment and interest charges on past due assessments under the Christmas Tree Promotion, Research, and Information Order (Order). The Order is administered by the Christmas Tree Promotion Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for fresh cut Christmas trees. This proposal would implement authority contained in the Order that allows the Board to collect late payment and interest charges on past due assessments. If this rule is finalized, it is proposed that late payment and interest charges would begin to accrue on unpaid assessments beginning 30 days after the effective date of the final rule. One additional change would provide authority in the Order for the Board to change the crop year and fiscal period through administrative action. This action would contribute to effective administration of the program.

DATES: Comments must be received by March 16, 2016.

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

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile (202) 205–2800; or electronic mail: *Patricia.Petrella@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Order (7 CFR part 1214). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866 and Executive Order 13563

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

Executive Order 13175

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

Executive Order 12988

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any

other Federal or State law authorizing promotion or research relating to an agricultural commodity.

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

Background

This proposed rule invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand markets for fresh cut Christmas trees. This proposed rule would implement authority contained in the Order and the 1996 Act that allows the Board to collect late payment and interest charges on past due assessments. This action was unanimously recommended by the Board and would contribute to effective administration of the program.

Section 1214.52(a) of the Order specifies that the funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments, and from other funds available to the Board. Paragraphs (b) and (c) specify that the collection of assessments on Christmas trees that are cut and sold or imported will be the responsibility of the producer who produces the Christmas trees or causes them to be cut, or the importer who imports Christmas trees for marketing in the United States.

Section 1214.52 (e) specifies that ''a late payment charge, may be imposed on any producer or importer who fails to remit to the Board, the total amount for which any such producer or importer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge may be imposed on the outstanding amount for which the producer or importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking.''

The Order was implemented in November 2011, but immediately stayed. The stay was lifted on April 7, 2014, and the program is currently in effect. Domestic assessments are due on February 15, 2016. This will be the first assessment collection by the Board. Importers will be responsible for paying the assessment directly to the Board 30 calendar days after importation. U.S. Customs and Border Protection will not be collecting on importers this season. Producers who domestically produce less than 500 Christmas trees annually or import less than 500 Christmas trees annually are exempt from assessment.

If this rulemaking is finalized, it is proposed that late payment and interest charges would begin to accrue on unpaid assessments beginning 30 days after the effective date of the final rule. Therefore, beginning 30 days after the effective date of the final rule a late payment charge of $250 would be applied to any unpaid assessments for producers and importers that are delinquent in paying their assessment. If the assessment is paid after February 15, but up to 29 days after the effective date of the final rule, no late payment charge would be assessed. The late payment charge would be increased to $500 after 90 days after the effective date of the final rule. Additionally, a 1.5 percent interest charge per month would be assessed on unpaid assessments and fees owed, beginning 30 days after the effective date of the final rule. The delay of the imposition of late payment and interest charges would only apply to the initial period of assessment collection. Assessment funds are used by the Board for activities designed to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

Board Recommendation

The Board met on July 17, 2015, and unanimously recommended specifying rates of late payment charges and interest on past due assessments in the Order's regulations. Specifically, the Board recommended that a late payment charge of $250 be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge would be increased to $500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per month would be assessed on late assessments and fees owed, beginning 30 days after the assessment due date. This fee structure is not overly burdensome on small producers or importers, but does create the incentive to promote timely payment of assessments due. This action would contribute to the efficient administration of the program.

This action would help facilitate program administration by providing an incentive for entities to remit assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new Subpart C would be added to the Order for rules and regulations, and a new section 1214.520 would be added to Subpart C.

This proposed rule would also make one additional change to the Order. This rule would revise the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The crop year and fiscal period would be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Initial Regulatory Flexibility Act Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (producers and importers) as those having annual receipts of no more than $7.5 million.

According to the 2012 Census of Agriculture published by the National Agricultural Statistics Service (NASS), it is estimated that there are 15,494 farms that sold cut Christmas trees in the United States. According to NASS, the value of cut Christmas trees sold in 2012 was $808,644,000. Dividing that value by the number of farms yields an average annual producer revenue of $52,191. Therefore it is estimated that all farms that sold Christmas trees had revenue under $7.5 million.

Likewise, based on Customs data, it is estimated there are 153 importers of Christmas trees. Using 2014 Customs data, all importers import less than $7.5 million worth of Christmas trees annually. Thus, all domestic producers and imports of Christmas trees would be considered small entities.

Regarding the value of the commodity, as mentioned above, based on 2012 NASS Census of Agriculture data, the value of the domestic cut Christmas trees was about $808.6 million. According to Customs data, the value of 2014 imports was about $25.8 million.

This rulemaking invites comments on prescribing late payment and interest charges on past due assessments under the Order. The Order is administered by the Board with oversight by USDA. Under the Order, assessments are collected from producers and importers of Christmas trees that are cut and sold or imported.

This proposed rule would add a new section 1214.520 that would specify a late payment charge of $250 to be applied to late assessments for producers and importers that are delinquent in paying their assessment 30 days after the due date. The late payment charge would be increased to $500 after 90 days of delinquency. Additionally, a 1.5 percent interest charge per month would be assessed on late assessments and fees owed, beginning 30 days after the assessment due date. This section would be included in a new Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order. This action was unanimously recommended by the Board and is authorized under section 1214.52(e) of the Order and section 517(e) of the 1996 Act.

This proposed rule would also make one additional change to the Order. This rule would revise the definition of crop year and fiscal period as defined in sections 1214.5 and 1214.8, respectively. The Board recommended this change because USDA revised the crop year and fiscal period during the promulgation process from what was originally proposed by the industry. The Board wants the flexibility to change these dates if necessary. The crop year and fiscal period would be revised by adding language to allow the Board to change the crop year or fiscal period administratively through Board action.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers and importers who pay their assessments on time. It would merely provide an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied uniformly. As for the impact on the industry as a whole, this action would help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities.

Additionally, as previously mentioned, the Order provides for an exemption for entities that produce or import less than 500 Christmas trees. Regarding alternatives, one option to the proposed action would be to maintain the status quo and not prescribe late payment and interest charges for past due assessments. However, the Board determined that implementing such charges would help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed rates of late payment and interest charges prescribed in other research and promotion programs and concluded that the late payment charge and the interest charge contained in this proposal would be appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved under OMB control number 0581–0093. This rulemaking would not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting and recordkeeping burden on domestic producers and importers of Christmas trees.

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

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

Regarding outreach efforts, the Board met on July 17, 2015, and unanimously recommended these proposed changes to the Order. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

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

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because the first collection of assessments under the Order, on the 2015 harvest, is underway and assessments were due on February 15, 2016. The Board would like to implement this incentive as soon as possible to facilitate the initial collection of assessments. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Christmas trees, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1214 is proposed to be amended as follows:

PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1214 continues to read as follows:

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

■ 2. Section 1214.5 is revised to read as follows:

§ 1214.5 Crop year.

Crop year means the period August 1 through July 31 or such other period approved by the Secretary.

■ 3. Section 1214.8 is revised to read as follows:

§ 1214.8 Fiscal period.

Fiscal period means the period August 1 through July 31 or such other period as approved by the Secretary.

■ 4. Subpart C—Rules and Regulations is added to read as follows:

Subpart C—Provisions Implementing the Christmas Tree Promotion, Research, and Information Order

§ 1214.520 Late payment and interest charges for past due assessments.

(1) A late payment charge shall be imposed on any producer or importer who fails to make timely remittance to the Board of the total assessments for which such producer or importer is liable. The late payment charge will be imposed on any assessments not received within 30 calendar days of the date they are due. This one-time late payment charge shall be $250 and would be increased to $500 after 90 days of delinquency.

(2) In addition to the late payment charge, 1.5 percent per month interest on the outstanding balance, including any late payment charge and accrued interest, will be added to any accounts for which payment has not been received by the Board within 30 calendar days after the date the assessments are due. Such interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: February 25, 2016.

Elanor Starmer,

Acting Administrator.

[FR Doc. 2016–04469 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3700; Directorate Identifier 2015–NM–171–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 757–200 and –200CB series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the lap splices at stringer (S)–14R, lower fastener row, are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive external dual frequency eddy current (DFEC) or internal high frequency eddy current (HFEC) inspections of the lap splice, inner skin fasteners, at S–14R, station (STA) 440 through STA 540, and corrective action if necessary. We are proposing this AD to detect and correct cracking of the fuselage skin lap splice. Such cracking could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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–2016–3700.

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–2016–3700; 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: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@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–2016–3700; Directorate Identifier 2015–NM–171–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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as WFD. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We have received reports indicating that the lap splices at S–14R, lower fastener row, are subject to WFD. This condition, if not corrected, could result in cracking of the fuselage skin lap splice and potential reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The Boeing Company has issued Boeing Service Bulletin 757–53A0102, dated October 8, 2015. The service information describes procedures for performing repetitive external DFEC or HFEC inspections of the lap splice, inner skin fasteners, at S–14R, STA 440—STA 540, and corrective action if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are 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 accomplishment of the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 757–53A0102, dated October 8, 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 572 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
Option 1: External DFEC inspection.	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle.	$194,480 per inspection cycle.
Option 2: Internal HFEC inspection.	10 work-hours × $85 per hour = $850 per inspection cycle.	$0	$850 per inspection cycle.	$486,200 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.

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–2016–3700; Directorate Identifier 2015–NM–171–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200 and –200CB, 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 an evaluation by the design approval holder (DAH) indicating that the lap splices at stringer (S)–14R, lower fastener row, are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracking of the fuselage skin lap splice. Such cracking could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Initial Inspection

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015, except as required by paragraph (h) of this AD: Do an external dual frequency eddy current inspection or internal high frequency eddy current inspection for cracking of the lap splice, inner skin lower fastener row, at S–14R, station (STA) 440 through STA 540, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015. Repeat either inspection thereafter at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015.

(h) Service Information Exceptions

(1) Where Boeing Alert Service Bulletin 757–53A0102, dated October 8, 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.

(2) The Condition column of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015, refers to total flight cycles and total flight hours ''as of the original issue date of this service bulletin.'' This AD, however, applies to the airplanes with the specified total flight cycles or total flight hours as of the effective date of this AD.

(i) Repair

If any crack is found during any inspection required by this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles 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 (k) of this AD. Information may be emailed to: *9-ANM-LAACO-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, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD 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.

(k) Related Information

(1) For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@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 February 15, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–03695 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3987; Directorate Identifier 2015–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by a report of improperly drilled bores, located on upper and lower stiffener joints to the web at a certain frame. This proposed AD would require a one-time inspection of the bores, and repair if necessary. We are proposing this AD to detect and correct an unsatisfactory bore that can adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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–2016–3987; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

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–2016–3987; Directorate Identifier 2015–NM–165–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2015–0204, dated October 8, 2015, (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation FALCON 7X airplanes. The MCAI states:

> On the assembly line of Falcon 7X airplanes, defects were detected on left hand and right hand engine pylons. A quality review revealed that bores located on upper and lower stiffener joints to the web at pylon Frame 41 were improperly drilled. Fettlings of borings, for fixing diameter 4 mm and 5 mm, were found ovalized, too deep and having irregular surface qualities under the head of fixing. Dassault Aviation identified the individual airplanes that are potentially affected by this production deficiency.
>
> This condition, if not detected and corrected, would adversely affect the structural integrity of the airplane.
>
> To address this potential unsafe condition Dassault Aviation published Service Bulletin (SB) 7X–346 to provide corrective action instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time [detailed] visual [and rototest] inspection for unsatisfactory bores and, depending on findings, repair of affected stiffener bores.

A bore is not satisfactory if it has any surface defects greater than or equal to 0.5 mm or if any chamfer dimension or edge distance value is not within the dimensions specified in Dassault Aviation Service Bulletin 7X–346, dated April 24, 2015. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3987.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Dassault Service Bulletin 7X–346 dated April 24, 2015. The service information describes procedures for a one-time inspection of the bores on stiffeners at Frame 41 on the engine pylons, and repair if necessary.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 55 airplanes of U.S. registry.

We also estimate that it would take about 66 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $308,550, or $5,610 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $149, for a cost of $1,849 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2016–3987; Directorate Identifier 2015–NM–165–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, manufacturer serial numbers 1 through 221 inclusive, except serial numbers 182 and 220.

(d) Subject

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

(e) Reason

This AD was prompted by a report of improperly drilled bores, located on upper and lower stiffener joints to the web at a certain frame. We are issuing this AD to detect and correct an unsatisfactory bore that can adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspect Bores

Within 4,000 flight cycles or 98 months, whichever occurs first since date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness, do a detailed visual and rototest inspection of the bores, located on upper and lower stiffener joints to the web at pylon Frame 41, to determine if the bores are not satisfactory, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–346, dated April 24, 2015.

(h) Repair

If, during the inspection required by paragraph (g) of this AD, it is determined that any bore is not satisfactory: Before further flight, repair affected bores, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–346, dated April 24, 2015, except as required by paragraph (i) of this AD.

(i) Exceptions

Where the Dassault Service Bulletin 7X–346, dated April 24, 2015, specifies to contact Dassault Aviation: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0204, dated October 8, 2015, for related information. This MCAI may be found on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3987.

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

Issued in Renton, Washington, on February 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04295 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3986; Directorate Identifier 2015–NM–147–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 certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes. This proposed AD was prompted by a determination that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. This proposed AD would require the installation of new clamps and polytetrafluoroethylene (TFE) sleeves on the wire bundles of the front spars and rear spars of the wings. This proposed AD would also require inspecting the existing TFE sleeves under the wire bundle clamps for correct installation, and replacement if necessary. We are proposing this AD to prevent potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, and consequent fire or explosion.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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 NPRM, 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–2016–3986.

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–2016–3986; 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: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@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–2016–3986; Directorate Identifier 2015–NM–147–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

The manufacturer has determined that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. Potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, if not corrected, could result in a fire or explosion.

Related Rulemaking

On September 17, 2007, we issued AD 2007–20–01, Amendment 39–15211 (72 FR 54533, September 26, 2007), applicable to certain The Boeing Company Model 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SP series airplanes. That AD requires reconfiguring the clamps of certain wire bundles and applying insulating sealant to certain fasteners inside the fuel tanks using Boeing Special Attention Service Bulletin 747–57–2327, Revision 1, dated July 10, 2006, on airplane line numbers 696 through 1363. Airplane line numbers 1364 through 1419 were changed during production. The actions required by AD 2007–20–01 are intended to prevent arcing inside the fuel tanks in the event of a lightning strike or high-powered short circuit, which could result in a fuel tank explosion or fire.

Since we issued AD 2007–20–01, Amendment 39–15211 (72 FR 54533, September 26, 2007), the FAA has determined that for certain The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, a certain fastener type in the fuel tank walls has insufficient bond to the structure and that an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. We determined that certain clamp locations need to be changed to prevent possible ignition sources in the fuel tanks. These clamps were not installed at these locations during production and were not identified in Boeing Special Attention Service Bulletin 747–57–2327, Revision 1, dated July 10, 2006. Therefore, it is necessary to install new clamps and TFE sleeves at these additional locations on the wire bundles of the front spars and rear spars of the left and right wings.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015. The service information describes procedures for installing new clamps and TFE sleeves on the wire bundles of the front spars and rear spars of the wings. The service information also describes procedures for inspecting TFE sleeves under the wire bundle clamps that were installed using the procedures specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 4, 2014, for correct installation, and replacing them if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are 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.

Costs of Compliance

We estimate that this proposed AD affects 135 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
Installation of wire bundle clamps	Up to 7 work-hours × $85 per hour = $595	$138	Up to $733	Up to $98,955.
Inspection	Up to 5 work-hours × $85 per hour = $425	$0	Up to $425	Up to $57,375.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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–2016–3986; Directorate Identifier 2015–NM–147–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that a certain fastener type in the fuel tank walls has insufficient bond to the structure, and an electrical wiring short could cause arcing to occur at the ends of fasteners in the fuel tanks. We are issuing this AD to prevent potential ignition sources in the fuel tank in the event of a lightning strike or high-powered short circuit, and consequent fire or explosion.

(f) Compliance

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

(g) Installation/Inspection

Within 60 months after the effective date of this AD, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For airplanes on which the modification specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 3, 2014, has not been done as of the effective date of this AD: Install new clamps and polytetrafluoroethylene (TFE) sleeves on the wire bundles of the front spars and rear spars of the wings, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(2) For airplanes on which the modification specified in Boeing Special Attention Service Bulletin 747–28–2324, dated November 3, 2014, has been done as of the effective date of this AD: Do a detailed inspection of the TFE sleeves under the wire bundle clamps for correct installation, and replace the sleeves if not correctly installed, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–28–2324, Revision 1, dated July 27, 2015.

(h) 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 (i)(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, alteration, or modification 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 method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6505; fax: 425–917–6590; email: *Tung.Tran@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, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04292 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3984; Directorate Identifier 2014–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–10–03, for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. AD 2013–10–03 currently requires one-time inspections for deformation and damage of the bogie beams of the main landing gear (MLG); repetitive inspections for damage and corrosion of the sliding piston sub-assembly on certain airplanes; and related investigative and corrective actions if necessary. Since we issued AD 2013–10–03, we have determined that certain one-time inspections are no longer necessary, certain compliance times may be extended, and an optional terminating action should be provided. This proposed AD would remove Model A340–500, and –600 series airplanes from the applicability, remove certain one-time inspections of the MLG bogie beams and the sliding piston sub-assembly; revise certain compliance times and provide, for certain airplanes, an optional terminating action for the repetitive actions. We are proposing this AD to detect and correct damage or corrosion under the bogie stop pad of both MLG bogie beams, which could result in a damaged bogie beam and consequent detachment of the beam from the airplane, or collapse of the MLG and departure of the airplane from the runway.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3984; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3984; Directorate Identifier 2014–NM–119–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On May 13, 2013, we issued AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013). AD 2013–10–03 requires actions intended to address an unsafe condition on all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. (AD 2013–10–03 superseded AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010)).

Since we issued AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013), we have determined that certain one-time inspections are no longer necessary, certain compliance times may be extended, and an optional terminating action should be provided.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0120R1, dated August 31, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> During a scheduled maintenance inspection on the Main Landing Gear (MLG), the bogie stop pad was found deformed and cracked. Upon removal of the bogie stop pad for replacement, the bogie beam was also found cracked.
>
> The results of a laboratory investigation indicated that an overload event had occurred and no fatigue propagation of the crack was evident.
>
> A second bogie beam crack was subsequently found on another aeroplane, located under a bogie stop pad which only had superficial paint damage.
>
> This condition, if not detected and corrected, could lead to landing gear bogie detachment from the aeroplane, or landing gear collapse, or a runway excursion,

possibly resulting in damage to the aeroplane and injury to the occupants.

To address this potential unsafe condition, EASA issued * * * [an earlier AD] to require accomplishment of a one-time detailed inspection under the bogie stop pad of both MLG bogie beams.

As a result of the one-time inspection required by that [earlier EASA] AD, applicable to A330, A340–200 and A340–300 aeroplanes, numerous bogie stop pad were found corroded and a few cracked.

The one-time inspection was retained in EASA AD 2011–0211 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0211_superseded.pdf/AD_2011-0211_1*] [which corresponds to FAA AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013)], which superseded * * * [an earlier EASA AD], applicable to all A330 and A340 aeroplanes, which also introduced repetitive inspections for A330, A340–200 and A340–300 aeroplanes, but not for the A340–500/-600 aeroplanes.

Since issuance of EASA AD 2011–0211, further investigation accomplished by Airbus led to the conclusion that the one-time inspection in accordance with Airbus Service Bulletin (SB) A330–32–3220, or Airbus SB A340–32–4264, or Airbus SB A340–32–5087, as applicable, is no longer necessary and, for those aeroplanes, only the inspections (initial and repetitive) in accordance with Airbus SB A330–32–3248 or Airbus SB A340–32–4286, as applicable, must remain.

In addition, Airbus also determined that repetitive inspections of the MLG in accordance with Airbus SB A340–32–5112 are necessary for A340–500/-600 aeroplanes.

Consequently, EASA issued * * * [another AD], which partially retained the requirements of EASA AD 2011–0211, which was superseded, and introduced repetitive detailed inspections of the MLG for A340–500 and A340–600 aeroplanes.

Since that [EASA] AD was issued, it was determined that repetitive inspections of the MLG are not necessary on the A340–500/-600 aeroplanes and that the threshold for the inspection of MLG P/N 10–210 series can be delayed. In addition, Airbus developed a mod of the MLG P/N 10–210 series that can be embodied both in production through mod 204421 and in service with Airbus SB A330–32–3268 or SB A340–32–4300, as applicable. This modification constitutes a terminating action for the repetitive inspections for aeroplanes equipped with MLG P/N 10–210 series.

For the reasons described above, this [EASA] AD is revised and requires inspection of the MLG (with an amended threshold for MLG P/N 10–210 series) and introduces an option to terminate the repetitive inspection with a modification of the MLG P/N 10–210 series.

The required actions include repetitive detailed inspections for damage and corrosion of the sliding piston sub-assembly, and related investigative and corrective actions if necessary. Related investigative actions include a test for indications of corrosion and damage to the bogie assembly base material, and a magnetic particle inspection for cracks, corrosion, and damage of the bogie beam. Corrective actions include repairing affected parts.

The optional terminating action modification of the bogie beam of an MLG having P/N 10–210 consists of installing a nickel under chrome coating, a new bogie beam stop pad, and new stop pad brackets.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3984.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A330–32–3248, Revision 02, dated April 16, 2014. This service information describes procedures for doing a detailed inspection for damage and corrosion of the MLG sliding piston sub-assembly, bogie beam stop pad and the bogie beam under the stop pad; and related investigative and corrective actions.

Airbus has also issued Service Bulletin A330–32–3268 and Airbus Service Bulletin A340–32–4300, both dated April 20, 2015. This service information describes procedures for modification of the bogie beam of an MLG having P/N 10–210, which includes installing a nickel under chrome coating, a new bogie beam stop pad, and new stop pad brackets.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Explanation of "RC" Procedures and Tests 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 procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests 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 procedures and tests identified as Required for Compliance (RC) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a Note under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 89 Model A330–200, –200 Freighter, and –300 series airplanes of U.S. registry.

We estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $90,780, or $1,020 per product.

Currently, there are no affected Model A340–200, or –300, series airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it would be subject to the same per-airplane cost specified above for the Model A330–200, –200 Freighter, and –300 series airplanes.

In addition, we estimate that any necessary follow-on actions would take about 24 work-hours, and 1 work-hour for reporting, and require parts costing $78, for a cost of $2,203 per product. We have no way of determining the number of aircraft that might need these actions.

According to the manufacturer, all of the parts costs of the optional

terminating action specified in 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. We have received no definitive data that would enable us to provide the work-hour cost estimates for the optional terminating action specified in this proposed AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to 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 control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is 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.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013), and adding the following new AD:

Airbus: Docket No. FAA–2016–3984; Directorate Identifier 2014–NM–119–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

This AD replaces AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013).

(c) Applicability

This AD applies to Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category; all serial numbers, except those that have embodied Airbus Modification 204421 in production.

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Model A340–211, –212, –213, –311, –312, –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of corroded and cracked bogie beams under the bogie stop pad. We are issuing this AD to detect and correct damage or corrosion under the bogie stop pad of both main landing gear (MLG) bogie beams, which could result in a damaged bogie beam and consequent detachment of the beam from the airplane, or collapse of the MLG and departure of the airplane from the runway.

(f) Compliance

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

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

For Model A330–200, Model A330–200 Freighter, and Model A330–300 series airplanes; and Model A340–200, and –300 series airplanes; equipped with a MLG having part number (P/N) 201252 series, or P/N 201490 series, or P/N 10–210 series: Do the applicable actions required by paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes equipped, as of the effective date of this AD, with a MLG that has been previously inspected as specified in Airbus Service Bulletin A330–32–3220, Airbus Service Bulletin A330–32–3248, Airbus Service Bulletin A340–32–4264, or Airbus Service Bulletin A340–32–4286, as applicable: At applicable times specified in paragraphs (h)(1) and (h)(2) of this AD, do a detailed inspection for damage (*e.g.,* cracking and fretting) and corrosion of the MLG sliding piston subassembly, bogie beam stop pad, and the bogie beam under the stop pad; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3248, Revision 02, dated April 16, 2014; or Airbus Service Bulletin A340–32–4286, dated October 5, 2011; as applicable, except as required by paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the MLG sliding piston sub-assembly, bogie beam stop pad, and the bogie beam under the stop pad, thereafter, at intervals not to exceed 2,500 flight cycles or 24 months, whichever occurs first.

(2) For airplanes equipped, as of the effective date of this AD, with a MLG that has not been previously inspected as specified in Airbus Service Bulletin A330–32–3220, Airbus Service Bulletin A330–32–3248, Airbus Service Bulletin A340–32–4264, or Airbus Service Bulletin, A340–32–4286, as applicable: At the applicable times specified in paragraphs (h)(3) and (h)(4) of this AD, do a detailed inspection for damage (*e.g.,* cracking and fretting) and corrosion of the MLG sliding piston sub-assembly, bogie beam stop pad, and the bogie beam under the stop pad; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3248, Revision 02, dated April 16, 2014; or Airbus Service Bulletin A340–32–4286, dated October 5, 2011; as applicable, except

as required by paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the MLG sliding piston sub-assembly, bogie beam stop pad, and the bogie beam under the stop pad, thereafter, at intervals not to exceed 2,500 flight cycles or 24 months, whichever occurs first.

(h) Compliance Times for Paragraph (g) of This AD Actions

Do the applicable actions required by paragraph (g) of this AD at the applicable time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD.

(1) For airplanes identified in paragraph (g)(1) of this AD having an MLG P/N 201252 series and P/N 201490 series: Before the accumulation of 2,500 total flight cycles or 24 months, whichever occurs first since the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Since first flight after a MLG overhaul.

(ii) Since first flight after the most recent accomplishment of an inspection of the MLG as specified in Airbus Service Bulletin A330–32–3220; Airbus Service Bulletin A330–32–3248; Airbus Service Bulletin A340–32–4286; or Airbus Service Bulletin A340–32–4264; as applicable.

(2) For airplanes identified in paragraph (g)(1) of this AD having an MLG P/N 10–210 series: Before the accumulation of 126 months since first flight of the MLG on an airplane or since first flight on an airplane after the most recent inspection of the MLG as specified in Airbus Service Bulletin A330–32–3248, Revision 01, dated December 13, 2012; or Airbus Service Bulletin A330–32–3248, Revision 02, dated April 16, 2014; or Airbus Service Bulletin A340–32–4286, dated October 5, 2011; as applicable.

(3) For airplanes identified in paragraph (g)(2) of this AD having an MLG P/N 201252 series and P/N 201490 series: At the later of the times specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) Before the accumulation of 2,500 total flight cycles or 24 months, whichever occurs first since the later of the times specified in paragraphs (h)(3)(i)(A) and (h)(3)(i)(B) of this AD.

(A) Since first flight of the MLG on an airplane.

(B) Since first flight after a MLG overhaul.

(ii) Within 16 months after the effective date of this AD.

(4) For airplanes identified in paragraph (g)(2) of this AD having MLG P/N 10–210 series: Before the accumulation of 126 months since first flight of the MLG on an airplane.

(i) Optional Overhaul

For the purposes of this AD, accomplishment of an MLG overhaul is acceptable instead of an inspection required by paragraph (g) of this AD. The inspections required by paragraph (g) of this AD are not terminated by an MLG overhaul, but are required at the next applicable compliance time required by paragraph (g) of this AD.

(j) Service Information Exception

If the applicable service information specified in paragraph (g) of this AD specifies to contact Messier-Dowty for instructions, or if any repair required by paragraph (g) of this AD is beyond the maximum repair allowance specified in the applicable service information specified in paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(k) Reporting Requirement

After accomplishing any of the corrective actions required by paragraph (g) of this AD or any repair required by paragraph (j) of this AD: Report the results of the corrective actions or repair to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; Attn: SDC32 Technical Data and Documentation Services; fax: +33 5 61 93 28 06; email: *sb.reporting@airbus.com,* at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the corrective action or repair was done on or after the effective date of this AD: Submit the report within 90 days after doing corrective action or repair.

(2) If the corrective action or repair was done prior to the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(l) Terminating Action Limitation

Accomplishment of corrective actions as required by paragraph (g) of this AD does not constitute terminating action for the repetitive inspections required by this AD.

(m) Optional Terminating Action for Certain Airplanes

For airplanes with any MLG having P/N 10–210 series: Modification on an airplane of the bogie beam of each MLG having P/N 10–210 series as specified in the Accomplishment Instructions of Airbus Service Bulletin A330–32–3268, dated April 20, 2015; or Airbus Service Bulletin A340–32–4300, dated April 20, 2015; as applicable; constitutes terminating action for the requirements of this AD for that airplane, provided that, following in-service modification, the airplane remains in post-service bulletin configuration.

(n) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (n)(1), (n)(2), or (n)(3), (n)(4), or (n)(5) of this AD.

(1) Airbus Service Bulletin A330–32–3248, dated October 5, 2011, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A330–32–3248, Revision 01, including Appendix 01, dated December 13, 2012, which was incorporated by reference in AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013).

(3) Airbus Service Bulletin A330–32–3220, dated October 10, 2008, which was incorporated by reference in AD 2010–02–10, Amendment 39–16181 (75 FR 4477, January 28, 2010).

(4) Airbus Service Bulletin A330–32–3220, Revision 01, dated October 5, 2011, which was incorporated by reference in AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013).

(5) Airbus Service Bulletin A330–32–3220, Revision 02, dated December 13, 2012, which was incorporated by reference in AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013).

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 2013–10–03, Amendment 39–17456 (78 FR 31386, May 24, 2013), are not approved as AMOCs with this AD.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Reporting Requirements:* 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.

(p) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed if any crack is found during any inspection required by this AD.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2014–0120R1, dated August 31, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3984.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04290 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–2859; Directorate Identifier 2016–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 1D and 1D1 turboshaft engines with a pre-modification (mod) TU357 gas generator module (M03), installed. This proposed AD was prompted by reports of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support. This proposed AD would require removing the pre-modification (mod) TU357 gas generator module (M03) and replacing with a part eligible for installation. We are proposing this AD to prevent failure of the labyrinth seal and engine, in-flight shutdown, and loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by May 2, 2016.

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.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this NPRM, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2016–2859; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The 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: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–2859; Directorate Identifier 2016–NE–04–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0009, dated January 13, 2016 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support have been reported.
>
> This condition, if not corrected, could lead to an uncommanded engine in-flight shutdown.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2859.

Related Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 292 72 1357, Version B, dated November 12, 2015. The MSB describes procedures for installing a post-modification (mod) TU357 gas generator module (M03). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral

agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this NPRM because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This NPRM would require removing the pre-modification (mod) TU357 gas generator module (M03) and replacing with a part eligible for installation.

Costs of Compliance

We estimate that this proposed AD affects 426 engines installed on helicopters of U.S. registry. We also estimate that it would take about 40 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $16,500 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $8,477,400.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

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):

Turbomeca S.A.: Docket No. FAA–2016–2859; Directorate Identifier 2016–NE–04–AD.

(a) Comments Due Date

We must receive comments by May 2, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Arriel 1D and 1D1 turboshaft engines with a pre-modification (mod) TU357 gas generator module (M03), installed.

(d) Reason

This AD was prompted by reports of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support. We are issuing this AD to prevent failure of the labyrinth seal and engine, in-flight shutdown, and loss of control of the helicopter.

(e) Actions and Compliance

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

(1) Within 4 months or 240 engine operating hours after the effective date of this AD, whichever occurs later, remove the pre-modification (mod) TU357 gas generator module (M03) from service and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0009, dated January 13, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–2859.

Issued in Burlington, Massachusetts, on February 18, 2016.

Ann C. Mollica,

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

[FR Doc. 2016–04284 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3983; Directorate Identifier 2015–NM–009–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–200 Freighter series airplanes; Model A330–200 and A330–300 series airplanes; Model A340–200 and A340–300 series airplanes; Model A340–500 series airplanes; and Model A340–600 series airplanes. This proposed AD was prompted by a report indicating that, during an operational test of a ram air turbine (RAT), the RAT did not deploy in automatic mode. This proposed AD would require identification of the manufacturer, part number, and serial number of the RAT, and re-identifying and modifying the RAT if necessary. We are proposing this AD to prevent non-deployment of the RAT, which, if preceded by a total engine flame-out, or during a total loss of normal electrical power generation,

could result in reduced control of the airplane.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* For Hamilton Sundstrand service information identified in this AD, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, IL 61125–7002; telephone 860–654–3575; fax 860–998–4564; email *tech.solutions@hs.utc.com;* Internet *http://www.hamiltonsundstrand.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3983; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3983; Directorate Identifier 2015–NM–009–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0008, dated January 15, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 Freighter series airplanes; Model A330–200, and A330–300 series airplanes; Model A340–200, and A340–300 series airplanes; Model A340–500 series airplanes; and Model A340–600 series airplanes. The MCAI states:

> During a scheduled Ram Air Turbine (RAT) operational test on an A330 aeroplane, the RAT did not deploy in automatic mode. The subsequent investigation conducted by the RAT manufacturer Hamilton Sundstrand (HS) and Arkwin Industries, revealed that this failure to deploy was due to an inadequate stroke margin in the manufacturing shimming procedure of the actuator deployment solenoids.
>
> This condition, if not corrected, could possibly result in reduced control of the aeroplane, particularly if occurring following a total engine flame out, or during a total loss of normal electrical power generation.
>
> Prompted by this unsafe condition, Airbus issued Service Bulletin (SB) A330–29–3126, SB A340–29–4097 and SB A340–29–5025, providing instructions to identify the manufacturer, part number (P/N) and serial number (s/n) of the RAT actuator, and to modify the shimming procedure for the affected RAT actuator.
>
> For the reasons described above, this [EASA] AD requires identification of the affected RAT actuators and, depending on its configuration (modified or not), the accomplishment of applicable corrective actions [modifying the RAT actuator. Additional actions include re-identifying the RAT actuator part number and RAT part number, as applicable.]

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3983.

Related ADs

EASA and the FAA have issued additional ADs related to the RAT. FAA AD 2012–21–19, Amendment 39–17235 (77 FR 65812, October 31, 2012, which corresponds to EASA AD 2011–0197, dated October 10, 2011), requires an inspection of the RAT anti-stall valve in the pump housing for correct setting, re-identification of the RAT pump, performing a functional ground test of the RAT, and replacement of the RAT pump or the RAT assembly with a serviceable part if necessary. FAA AD 2012–21–19 is applicable to all Airbus Model A330–200 Freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes.

The FAA also issued AD 2012–21–20, Amendment 39–17236 (77 FR 65799, October 31, 2012), which corresponds to EASA AD 2011–0204, dated October 14, 2011. FAA AD 2012–21–20 requires identification of the supplier, part number, and serial number of the RAT actuator; and re-identification of the RAT actuator and RAT, or replacement of the RAT actuator with a serviceable unit and re-identification of the RAT, if necessary. FAA AD 2012–21–20 is applicable to certain Airbus Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes.

In addition, the FAA issued AD 2015–26–02, Amendment 39–18350 (80 FR 81174, December 29, 2015), which corresponds to EASA AD 2013–0274, dated November 15, 2013. FAA AD 2015–26–02 requires, for certain airplanes, identification of the part number, serial number, and standard of the RAT pump, RAT module, RAT actuator, and RAT lower gearbox assembly; and corrective actions if necessary. For certain other airplanes, AD 2015–26–02 requires re-identification or replacement of the RAT module.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information, which describes

procedures for identifying the supplier, part number, and serial number of the installed RAT actuator; modifying the RAT; and re-identifying the RAT actuator and RAT.

- Service Bulletin A330–29–3126, dated June 12, 2014.
- Service Bulletin A340–29–4097, dated June 12, 2014.
- Service Bulletin A340–29–5025, dated June 16, 2014.

Hamilton Sundstrand has issued Service Bulletins ERPS06M–29–21, dated May 27, 2014; and ERPS33T–29–7, dated June 6, 2014. This service information describes procedures for identifying the affected RAT actuator and RAT part numbers and serial numbers, modifying affected actuators, and re-identifying affected RAT actuators and RATs.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 84 airplanes 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 this proposed AD on U.S. operators to be $7,140, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 14 work-hours and require parts costing $427,301, for a cost of $428,491 per product. We have no way of determining the number of aircraft that might need actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2016–3983; Directorate Identifier 2015–NM–009–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

This AD affects AD 2012–21–19, Amendment 39–17235 (77 FR 65812, October 31, 2012); AD 2012–21–20, Amendment 39–17236 (77 FR 65799, October 31, 2012); and AD 2015–26–02, Amendment 39–18350 (80 FR 81174, December 29, 2015).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(7) of this AD, certificated in any category.

(1) Airbus Model A330–223F and –243F airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(2) Airbus Model A330–201, –202, –203, –223, and –243 airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(3) Airbus Model A330–301, –302, –303, –321, –322, –323,- 341, –342, and –343 airplanes, all manufacturer serial numbers; except those on which Airbus Modification 204067 has been embodied in production.

(4) Airbus Model A340–211, –212, and –213, airplanes, all manufacturer serial numbers.

(5) Airbus Model A340–311, –312, and –313 airplanes, all manufacturer serial numbers.

(6) Airbus Model A340–541 airplanes, all manufacturer serial numbers.

(7) Airbus Model A340–642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Reason

This AD was prompted by a report indicating that, during an operational test of a ram air turbine (RAT), the RAT did not deploy in automatic mode. We are issuing this AD to prevent non-deployment of the RAT, which, if preceded by a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

(f) Compliance

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

(g) Identification and Replacement for Certain Airbus Model A330, and A340–200 and –300 Airplanes

For Airbus Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes: Within 30 months after the effective date of this AD, identify the supplier, part number, and serial number of the installed RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(1) If the supplier identified is Arkwin Industries, and the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014, with a description of ''correctly shimmed:'' Within 30 months after the effective date of this AD, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(2) If the supplier identified is Arkwin Industries, and the identified actuator RAT part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014, with a description of ''incorrectly shimmed:'' Within 30 months after the effective date of this AD, modify the RAT actuator and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(3) If the supplier identified is Arkwin Industries, and the identification plate for the RAT actuator is missing, or the part number and serial number are not listed in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014: Within 30 months after the effective date of this AD, modify the RAT actuator and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014; as applicable.

(h) Identification and Replacement for Certain Airbus Model A340–500 and –600 Airplanes

For Airbus Model A340–500 and –600 airplanes: Within 30 months after the effective date of this AD, identify the part number and serial number of the installed RAT actuator, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(1) If the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, with a description of ''correctly shimmed:'' Within 30 months after the effective date of this AD, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(2) If the identified RAT actuator part number and serial number are listed in Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, and the serial number is included in table 2 of Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, with a description of ''incorrectly shimmed:'' Within 30 months after the effective date of this AD, modify the RAT actuator and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(3) If the identification plate for the RAT actuator is missing, or the part number and serial number are not listed in Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014: Within 30 months after the effective date of this AD, modify the RAT actuator and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(i) Terminating Action for Certain Requirements of Other ADs

(1) For Airbus Model A330–200 Freighter, A330–200, and A330–300 series airplanes; and Model A340–200 and –300 series airplanes: Accomplishment of the actions required by paragraph (g)(1), (g)(2), or (g)(3) of this AD constitutes compliance with the requirements of paragraph (g)(1) of AD 2012–21–19, Amendment 39–17235 (77 FR 65812, October 31, 2012); paragraph (g) of AD 2012–21–20, Amendment 39–17236 (77 FR 65799, October 31, 2012); and paragraphs (g), (h), and (i) of AD 2015–26–02, Amendment 39–18350 (80 FR 81174, December 29, 2015), for that airplane only.

(2) For Airbus Model A340–500 and –600 series airplanes: Accomplishment of the actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD constitutes compliance with the requirements of paragraphs (h)(1) and (h)(2) of AD 2012–21–20, Amendment 39–17236 (77 FR 65799, October 31, 2012); and paragraph (j) of AD 2015–26–02, Amendment 39–18350 (80 FR 81174, December 29, 2015), for that airplane only.

(j) Parts Installation Limitations

As of the effective date of this AD, no person may install any RAT actuator or any RAT having a part number identified in table 1 to paragraph (j) of this AD, on any airplane, unless it meets the conditions specified in paragraph (j)(1) or (j)(2) of this AD, as applicable.

TABLE 1 TO PARAGRAPH (j) OF THIS AD—AFFECTED PART NUMBERS

Affected Airbus airplane models	RAT part number	RAT actuator part number
Model A330–200 and –300 series airplanes	1720934C, 1720934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A330–200 Freighter series airplanes	1720934C, 1720934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A340–200 and –300 series airplanes	1720934C, 1720934D, 766351A, 768084A, 770379A, 770952C, 770952D, 770952E.	5912958, 5915768
Model A340–500 and –600 series airplanes	772722H, 772722J, 772722L	5912536, 5915769

(1) For Airbus Model A330–200 Freighter series airplanes; Model A330–200, and A330–300 series airplanes; and Model A340–200 and –300 series airplanes: The RAT actuator or RAT has a serial number listed as affected and modified in Hamilton Sundstrand Service Bulletin ERPS06M–29–21, dated May 27, 2014, and the RAT has been re-identified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3126, dated June 12, 2014; or Airbus Service Bulletin A340–29–4097, dated June 12, 2014.

(2) For Airbus Model A340–500 and –600 series airplanes: The RAT actuator or the RAT has a serial number listed as affected and modified in Hamilton Sundstrand Service Bulletin ERPS33T–29–7, dated June 6, 2014, and the RAT has been re-identified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5025, dated June 16, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Required for Compliance (RC):* If any Airbus service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0008, dated January 15, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3983.

(2) For Airbus service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.* For Hamilton Sundstrand service information identified in this AD, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, IL 61125–7002; telephone 860–654–3575; fax 860–998–4564; email *tech.solutions@hs.utc.com*; Internet *http://www.hamiltonsundstrand.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 February 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04288 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3988; Directorate Identifier 2015–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by reports of chafing of the feeder cable at the pylon-wing junction due to vibration; one report revealed that the cable loom plastic support bracket of the G-route was broken due to vibration; and another report revealed wire chafing due to clamp damage. This proposed AD would require modifying the cable loom support bracket of the G-route of the inboard pylons at the pylon-wing junction. We are proposing this AD to prevent chafing of the wiring in the pylon-wing area, which could result in an electrical short circuit near a flammable fluid vapor zone, and consequent fire or fuel tank explosion.

DATES: We must receive comments on this proposed AD by April 15, 2016.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–3988; Directorate Identifier 2015–NM–130–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0142, dated July 17, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and

–300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> Two events have been reported of feeder cable chafing at the pylon-wing junction on A330 aeroplanes. Inspection of the affected area for the first event revealed that the bracket supporting the cables G-route, made in plastic, was broken. The second event was due to clamp damage. Failure of support bracket and/or damage of clamp led to the feeder cables gradually chafing away at the cut-out edge by vibration. Due to design similarity, A340 aeroplanes are also affected by this issue.
>
> This condition, if not corrected, could create a short circuit, in combination with fuel vapour on [the] ground, possibly resulting in a fire or explosion.
>
> To address this unsafe condition, Airbus developed modifications to be embodied in service through Airbus Service Bulletin (SB) A330–92–3132, SB A340–92–4100 or SB A340–92–5066, as applicable to aeroplane type and model.
>
> For the reasons described above, this [EASA] AD requires the embodiment of these modifications [of the cable loom support bracket of the G-route of the inboard pylons] at the pylon/wing junction in [left-hand] LH and [right-hand] RH wings.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Service Bulletin A330–92–3132, Revision 01, dated May 21, 2015.
- Service Bulletin A340–92–4100, Revision 01, dated May 21, 2015.
- Service Bulletin A340–92–5066, dated June 25, 2014.

The service information describes procedures for modifying the cable loom support bracket of the G-route of the inboard pylons at the pylon-wing junction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 90 airplanes of U.S. registry.

We also estimate that it would take about 8 work-hours per product to comply with the modification requirements of this proposed AD. Required parts would cost about $900 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost for the inspection specified in this proposed AD on U.S. operators to be $142,200, or $1,580 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2016–3988; Directorate Identifier 2015–NM–130–AD.

(a) Comments Due Date

We must receive comments by April 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; except airplanes on which Airbus Modification 203672 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of chafing of the feeder cable at the pylon-wing junction due to vibration; one report revealed that the cable loom plastic support bracket of the G-route was broken due to vibration; and another report revealed wire chafing due to clamp damage. We are issuing this AD to prevent chafing of the wiring in the pylon-wing area, which could result in an electrical short circuit near a flammable fluid vapor zone, and consequent fire or fuel tank explosion.

(f) Compliance

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

(g) Modification of the Feeder Cable

Within 18 months after the effective date of this AD: Modify the cable loom support bracket of the G-route 7701VB in the left-hand side of the inboard pylon, and the G-route 7702VB in the right-hand side of the inboard pylon, located at the pylon-wing junction, in accordance with the applicable service information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Airbus Service Bulletin A330–92–3132, Revision 01, dated May 21, 2015.

(2) Airbus Service Bulletin A340–92–4100, Revision 01, dated May 21, 2015.

(3) Airbus Service Bulletin A340–92–5066, dated June 25, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for the modification required by paragraph (g) of this AD, if the modification was performed before the effective date of this AD using Airbus Service Bulletin A330–92–3132, dated June 19, 2014; or Airbus Service Bulletin A340–92–4100, dated June 19, 2014; as applicable.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0142, dated July 17, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3988.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–04296 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0021; Airspace Docket No. 16–ANM–1]

Proposed Amendment of Class E Airspace; Ogden-Hinckley, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from the surface designated as an extension to the Class D surface area at Ogden-Hinckley Airport, Ogden, UT. The FAA's Aeronautical Information Services identified that the width of the Class E extension to the Class D surface area did not meet the current criteria. This action would enhance the safety and management of Standard Instrument Approach Procedures (SIAPs) for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 15, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–0021; Airspace Docket No. 16–ANM–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Turan Wright, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone: 425–203–4533.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the

scope of that authority as it would amend Class E airspace at Ogden-Hinckley Airport, Ogden, UT.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–0021/Airspace Docket No. 16–ANM–1.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, 202–267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying the Class E airspace extending upward from the surface designated as an extension to the Class D surface area. The Class E surface airspace designated as an extension to the Class D would be expanded to 4 miles either side of the 225° radial extending 16 miles southwest of the Ogden Hinckley airport. The FAA found this action necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport.

Class E airspace designations are published in paragraph 6004 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6004 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM UT E4 Ogden-Hinckley Airport, UT [Modified]

Ogden-Hinckley Airport, UT
(Lat. 41°11′44″ N., long. 112°00′47″ W.)
Hill AFB, UT
(Lat. 41°07′26″ N., long. 111°58′23″ W.)

That airspace extending upward from the surface 4 miles north and parallel to the 225° radial of Ogden-Hinckley Airport, extending from the 4.3-mile radius to 16 miles southwest of the airport, thence southeast to lat. 40°57′3″ N., long. 112°12′44″ W., thence northeast to the point where the Ogden-Hinckley 99° radial intersects the Hill AFB 4.6-mile radius to the northeast of Hill AFB.

Issued in Seattle, Washington, on February 4, 2016.

Michael Hannigan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–04201 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2016–N–0406]

Medical Devices; Hematology and Pathology Devices; Classification of Blood Establishment Computer Software and Accessories

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is proposing to classify the blood establishment computer software (BECS) and BECS accessories into class II (special controls). FDA is identifying proposed special controls for BECS and BECS accessories that are necessary to provide a reasonable assurance of safety and effectiveness. FDA is also giving notice that the Agency does not intend to exempt BECS and BECS accessories from premarket notification requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). FDA is publishing in this document the recommendations of the Blood Product Advisory Committee regarding the classification of these devices. After considering public comments on the proposed classification, FDA will publish a final regulation classifying these device types.

DATES: Submit either electronic or written comments by May 31, 2016. Please see section IV of this document for the proposed effective date of a final rule that may issue based on this proposal.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–0406 for ''Medical Devices; Hematology and Pathology Devices; Classification of Blood Establishment Computer Software and Accessories.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Authorities

The FD&C Act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three categories (classes) of devices depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under sections 501, 502, 510, 516, 518, 519, or 520 or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be

regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including the issue of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Under section 513(d)(1) of the FD&C Act, devices that were in commercial distribution before the enactment of the Medical Device Amendments of 1976 (1976 amendments), May 28, 1976 (generally referred to as ''preamendments devices''), are classified after FDA: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device.

FDA has classified most preamendments devices under these procedures, relying upon valid scientific evidence as described in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c), to determine that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use.

Devices that were not in commercial distribution before May 28, 1976 (generally referred to as ''postamendments devices''), are classified automatically by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) FDA classifies or reclassifies the device into class I or II or (2) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval.

The Agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A person may market a preamendments device that has been classified into class III through premarket notification procedures without submission of a premarket approval application (PMA) until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

B. Regulatory History of the Devices

After the enactment of the 1976 amendments, FDA began to identify and classify all preamendments devices in accordance with section 513(b) of the FD&C Act.

The first BECS 510(k) premarket notification was cleared by FDA on August 26, 1996. Information Data Management, Inc., submitted premarket notifications for their Components & Distribution Information System and Donor Management Information System. These devices were compared to systems marketed prior to the 1976 medical device amendments, including the Blood Inventory Management System by Computer Sciences Corporation and the Donor Deferral Registry developed by the American National Red Cross. Between 1996 and December 2015, FDA has cleared 220 BECS and BECS accessories under the 510(k) program.

In 1998, FDA sought recommendations from the Blood Product Advisory Committee (BPAC) serving as a Device Classification Panel on the classification of BECS. The Device Classification Panel recommended regulating BECS as a class II device with premarket review (Ref. 1). The classification of BECS was not finalized following the Device Classification Panel's recommendation in 1998 because of competing priorities.

On December 3, 2014, the BPAC, serving as a Device Classification Panel (the Panel), again convened to discuss the classification of BECS and BECS accessories (Ref. 2). The Panel discussed the risks to health associated with BECS and BECS accessories, the classification of BECS and BECS accessories, and if classified as class II devices, the special controls that would be required for these devices. The Panel agreed that general controls were not sufficient to provide a reasonable assurance of safety and effectiveness of BECS and BECS accessories. The Panel believed that BECS and BECS accessories presented a potential unreasonable risk of illness, injury, or death, and that sufficient information exists to establish special controls for these devices. Consequently, the Panel recommended that these devices be classified into class II (special controls) with premarket review. FDA is not aware of new information that has arisen since this Panel meeting that would provide a basis for different recommendations or findings. The recommendations of the Panel are summarized in Section II.

II. Panel Recommendation

This section summarizes the Panel's deliberations on December 3, 2014.

A. Identification

FDA proposed the following definition of BECS and BECS accessory to the Panel for their consideration: BECS and BECS accessories are devices used in the manufacture of blood and blood components to assist in the prevention of disease in humans by identifying unsuitable blood donors by: (1) Preventing the release of unsuitable blood and blood components for transfusion or for further manufacturing into products for human treatment or diagnosis; (2) performing compatibility testing between donor and recipient; and (3) performing positive identification of patients and blood components. A BECS accessory expands or modifies the function of the BECS and/or indications for use of the BECS device. These devices are intended for use with or capable of functioning with BECS for the purpose of augmenting or supplementing the BECS performance.

B. Recommended Classification of the Panel

The Panel recommended that BECS and BECS accessories be classified into class II (special controls) with premarket review, and that FDA revise the proposed definition of a BECS accessory. The consensus of the Panel was that class II classification (special controls) and premarket review would provide reasonable assurance of safety and effectiveness of these devices and that there is sufficient information to establish special controls to provide such assurance for BECS and BECS accessories.

The Panel considered the following valid scientific evidence to make their recommendations regarding the safety and effectiveness of the device under its conditions of use. Specifically, the Panel considered the history of safety and effectiveness of BECS and BECS accessories over many years of use in

blood establishments; the results of an FDA review of the scientific literature; medical device reports (MDRs) of adverse events or malfunctions; device recalls; and a summary of FDA's extensive inspectional and regulatory experiences with BECS and BECS accessories.

The Panel also commented on the proposed definition of BECS accessories: ''A BECS accessory expands or modifies the function of the BECS and/or indications for use of the BECS device.'' These devices are intended for use with or capable of functioning with BECS for the purpose of augmenting or supplementing the BECS performance. The Panel recommended that FDA clarify which added functionalities would be considered a BECS accessory and, therefore, subject to regulations as a class II device with special controls.

C. Risks to Health and Special Controls

As required by section 513(f)(1)(A) of the FD&C Act, FDA provided to the Panel the following summary of valid scientific evidence regarding the benefits and risks of BECS and BECS accessories. In the 1990s, during establishment inspections, FDA investigators observed numerous problems with BECS, including software programs that posed significant risks to health, such as the potential for release for transfusion of blood and blood components found to be reactive when tested with assays for Human Immunodeficiency Virus. During the inspections, FDA found that unsuitable blood and blood components had been released and distributed as a result of improperly designed software.

From 1996 to 2014, FDA received 201 MDRs for BECS and BECS accessories. The majority (86 percent) of the MDRs were for device malfunctions. In addition, one death and nine injuries were reported. The reported patient death was not attributed to the BECS. The information provided in the reports of the nine injuries was insufficient to accurately identify the nature of the injuries or the attribution to BECS. The remaining reports included events classified in various categories such as user error, operational problems, and labeling.

Similarly, from 2006 to 2013, BECS manufacturers initiated 56 voluntary device recalls. The deviations included programming errors, inadequate design requirements, and incorrect implementation of the design. The potential consequences of the BECS deviations included presenting donors with incorrect donor history questionnaires, failing to save certain test results in donor records, and failing to identify donors as deferred. The recalls were classified as class II and class III. A class II recall is a situation in which use of or exposure to a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote. A class III recall is a situation in which use of or exposure to a violative product is not likely to cause adverse health consequences. No recalls were classified as class I, a situation in which there is reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death.

FDA presented the following risks to health associated with BECS and BECS accessories: (1) Transfusion reaction or death from the inadvertent release and transfusion of incompatible blood or blood components; (2) transfusion injury from the transfusion of inaccurately labeled and/or stored blood components; (3) transfusion injury or death from the release of blood components from otherwise ineligible donors (for example, the transmission of infectious diseases from the inadvertent release of blood components that have tested positive for transfusion-transmitted disease agents); and (4) donor injury from inappropriate or excessive donation of blood or blood components.

FDA also proposed the measures described in table 1 to mitigate the risks to health associated with BECS and BECS accessories. The Panel agreed that the risks to health and mitigation measures identified by FDA and summarized in table 1 are applicable to BECS and BECS accessories.

FDA next presented the following special controls for the Panel's considerations: (1) Software performance and functional requirements are provided in the premarket submission including detailed design specifications (*e.g.,* algorithms or control characteristics, alarms, device limitations, and safety requirements); (2) verification and validation testing and hazard analysis are to be performed and provided in the premarket submission; (3) labeling includes software limitations, unresolved anomalies, annotated with an explanation of the impact on safety or effectiveness, revision history, and hardware and peripheral specifications; (4) traceability matrix performed and provided in the premarket submission; and (5) performance testing is performed and provided in the premarket submission, as necessary to ensure the safety and effectiveness of the system, and when adding new functional requirements, (*e.g.,* electrical safety, electromagnetic compatibility, or wireless coexistence).

The Panel members generally agreed with the special controls proposed by FDA. One Panel member commented that requiring the performance of verification and validation and hazard analysis is not sufficient without defining what type of testing is necessary, and expressed particular concern regarding the acceptable level of verification for BECS. Another member asked whether many of the proposed special controls should be considered general controls for the purposes of software manufacturing considering the evolution of technology.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR BECS AND BECS ACCESSORIES

Identified risks to health	Mitigation measures
Transfusion reaction or death.	Performance and functional requirements.
Transmission of infectious disease.	Performance and testing.
Donor health risk from too frequent or inappropriate donation.	Labeling.

III. Proposed Classification and FDA's Findings

After considering the recommendations of the Panel and the valid scientific evidence, including the published literature, MDRs, recall information, and FDA's extensive inspection and regulatory experiences with these device types (Ref. 3), FDA proposes to classify BECS and BECS accessories into class II (special controls) with premarket review. FDA believes general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness for these devices and that there is sufficient information to establish special controls to provide such assurance. FDA believes that special controls, in addition to general controls, would provide a reasonable assurance of the safety and effectiveness of BECS and BECS accessories and would, therefore, mitigate the risk to patients of transfusion reaction or death and transmission of infectious disease and risks to donors because of inappropriate donations.

The special controls proposed for BECS and BECS accessories, specifically performance and functional requirements, device verification and validation, hazards analysis,

traceability, and performance testing, collectively ensure that the manufacturer performs and documents the activities necessary to decrease the risk of malfunction that could result in the adverse events noted above. Further, appropriate labeling ensures that the user of the device is provided clear instructions for use, including the limitations of the device, to reduce the risk of user error that could result in the risks to health associated with these devices.

FDA has amended the proposed definition of BECS accessories consistent with the recommendation of the Panel and made other minor edits to the definition of BECS and the special controls presented to the Panel in the proposed regulation.

Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. The Agency does not intend to exempt BECS and BECS accessories from 510(k) premarket notification as allowed under section 510(m) of the FD&C Act. FDA believes premarket notification is necessary for these devices to assure their safety and effectiveness.

IV. Proposed Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed regulation is consistent with historical regulatory oversight given to this type of device, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

This rule proposes to classify BECS and BECS accessories into Class II devices with special controls and subject to premarket review. The proposed special controls for these devices are necessary to provide a reasonable assurance of safety and effectiveness. FDA has cleared 220 BECS and BECS accessories under the 510(k) program consistent with the recommendations in the FDA guidance, ''Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices,'' dated May 2005 (Ref. 4). As current practice, manufacturers already conform to the risk mitigations that are being proposed as special controls for BECS and BECS accessories, so this rule would essentially formalize current practice and will not result in any additional associated costs. Likewise, this classification will not result in any significant changes in how 510(k) premarket notifications for the affected devices are submitted or prepared by manufacturers or in how they are reviewed by FDA. Therefore, compliance with the special controls proposed for this device would not yield significant new costs for affected manufacturers. Because the classification of these devices to Class II (special controls) would not impose significant new obligations on manufacturers, the Agency concludes that the proposed rule, if finalized, will impose no additional regulatory burdens.

VII. Paperwork Reduction Act

This proposed rule refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR subpart 801 have been approved under OMB control number 0910–0485. Therefore, FDA tentatively concludes that the proposed requirements in this document are not subject to review by OMB because they do not constitute a ''new collection of information'' under the PRA.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Blood Product Advisory Committee Meeting transcript—March 20, 1998 (*http://www.fda.gov/ohrms/dockets/ac/98/transcpt/3391t2.pdf).*
2. Blood Product Advisory Committee Meeting transcript—December 3, 2014 (*http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/BloodProductsAdvisoryCommittee/ucm386681.htm*).
3. FDA Executive Summary. Blood Products Advisory Committee Meeting—December 3, 2014 (*http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/BloodProductsAdvisoryCommittee/ucm427392.htm*).
4. Guidance for Industry and FDA Staff: Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices, May 2005, *http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm089543.htm.*

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend part 864 as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. In subpart J, add § 864.9165 to read as follows:

§ 864.9165 Blood establishment computer software and accessories.

(a) *Identification.* Blood establishment computer software (BECS) and BECS accessories are devices used in the manufacture of blood and blood components to assist in the prevention of disease in humans by identifying ineligible donors, by preventing the release of unsuitable blood and blood components for transfusion or for further manufacturing into products for human treatment or diagnosis, by performing compatibility testing between donor and recipient, or by performing positive identification of patients and blood components at the point of transfusion to prevent transfusion reactions. A BECS accessory is intended for use with BECS to augment its performance or to expand or modify its indications for use.

(b) *Classification*—Class II (special controls). The special controls for these devices are:

(1) Software performance and functional requirements including detailed design specifications (*e.g.,* algorithms or control characteristics, alarms, device limitations, and safety requirements).

(2) Verification and validation testing and hazard analysis must be performed.

(3) Labeling must include:

(i) Software limitations;

(ii) Unresolved anomalies, annotated with an explanation of the impact on safety or effectiveness;

(iii) Revision history; and

(iv) Hardware and peripheral specifications.

(4) Traceability matrix must be performed.

(5) Performance testing to ensure the safety and effectiveness of the system must be performed, including when adding new functional requirements (*e.g.,* electrical safety, electromagnetic compatibility, or wireless coexistence).

Dated: February 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04411 Filed 2–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0134]

RIN 1625–AA08

Special Local Regulations; Fajardo Offshore Challenge; Rada Fajardo; Fajardo, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation on the waters of Rada Fajardo in Fajardo, Puerto Rico during the Fajardo Offshore Challenge, a high speed boat race. The event is scheduled to take place on Sunday, April 4, 2016. Approximately 30 high-speed power boats will be participating in the races. The special local regulation is necessary for the safety of the race participants, participant vessels, and the general public during the event. The special local regulation would establish the following two areas: one race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; and a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 21, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0134 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Efrain Lopez, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2097, email *efrain.lopez1@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 4, 2016, Puerto Rico Offshore Series, Inc. is sponsoring the Fajardo Offshore Challenge, a series of high-speed boat races. The races will be held on the waters of Rada Fajardo in Fajardo, Puerto Rico. Approximately 30 high-speed power boats and PWCs will be participating in the races.

The purpose of this proposed rulemaking is to ensure the safety of vessels and the navigable waters within the regulated areas before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The special local regulation encompass certain waters of Rada Fajardo in Fajardo, Puerto Rico. The proposed special local regulation would be enforced from 10 a.m. until 4 p.m. on April 4, 2016. The special local regulation consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulation will be enforced for only six hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area and buffer zone without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the Special Local Regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Rada Fajardo in Fajardo encompassed within the special local regulations from 10 a.m. until 4 p.m. on April 4, 2016.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule would implement a special local regulation lasting less than 6 hours that would prohibit entry from non-participants and persons or vessels not involved in the event from enter in, transiting through, anchoring in, or remaining within the race area or buffer zone. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you

submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary 33 CFR 100.35T07–0134 to read as follows:

§ 100.35T07–0134 Special Local Regulations; International Dinghy Regatta; San Juan Harbor, Puerto Rico.

(a) *Regulated Areas.* The following regulated areas are established as Special Local Regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Rada Fajardo, Fajardo, Puerto Rico encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°21.433′ N, 65°37.242′ W; thence southeast to Point 2 in position 18°21.402′ N, 65°37.162′ W; thence northeast to Point 3 in position 18°22.937′ N, 65°36.358′ W; thence northwest to point 4 in position 18°22.980′ N, 65°36.492′ W; thence northwest back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat race, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Rada Fajardo, Fajardo, Puerto Rico encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°21.425′ N, 65°37.277′ W; thence southeast to Point 2 in position 18°21.366′ N, 65°37.158′ W; thence northeast to Point 3 in position 18°22.951′ N, 65°36.314′ W; thence northwest to point 4 in position 18°23.017′ N, 65°36.507′ W; thence southwest back to the origin. All persons and vessels except those persons and vessels enforcing the buffer zone are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

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

(c) *Regulations.* (1) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

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

(d) *Enforcement Date.* This rule is enforced from 10 a.m. until 4 p.m. on April 4, 2016.

Dated: February 24, 2016.

R. W. Warren,

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

[FR Doc. 2016–04409 Filed 2–29–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0014; FRL–9943–01-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Wyoming Air Quality Standards and Regulations; Chapter 6, Permitting Requirements, Section 13, Nonattainment New Source Review Permit Requirements, and Section 14, Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on November 6, 2015. This submittal revises the Wyoming Air Quality Standards and Regulations (WAQSR) that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 31, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0014 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S. Environmental Protection Agency

(EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

In this proposed rulemaking, we are proposing to take action to approve the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP. These provisions were submitted by the Wyoming Department of Environmental Quality (WDEQ) on November 6, 2015, to address certain CAA requirements related to ozone nonattainment areas.

On March 27, 2008, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone with an 8-hour concentration limit of 0.075 parts per million (''8-Hour Ozone NAAQS''). Effective July 20, 2012, EPA designated the Upper Green River Basin (UGRB) area of Wyoming as ''nonattainment'' for the 8-Hour Ozone NAAQS. For nonattainment areas, states are required to submit SIP revisions, including a nonattainment NSR permitting program for the construction and operation of new or modified major stationary sources located in the nonattainment area.

On May 10, 2011, before the formal designation of the UGRB area as nonattainment for the 8-Hour Ozone NAAQS, the WDEQ submitted a nonattainment new source review (NSR) permitting program SIP revision to EPA. This new section incorporated by reference 40 Code of Federal Regulations (CFR) section 51.165 in its entirety, with the exception of paragraphs (a) and (a)(1), into Wyoming's Chapter 6 Permitting Requirements. On February 20, 2015 (80 FR 9194), EPA took final action to disapprove the portion of Wyoming's May 10, 2011 submittal that added this new section to the permitting requirements in WAQSR Chapter 6. As explained in 80 FR 9194, the method Wyoming used to create a nonattainment NSR program was not consistent with the CAA and EPA regulations.

Our final disapproval started a two-year clock under CAA section 110(c)(1) for our obligation to promulgate a federal implementation plan (FIP) to correct the deficiency and the 18-month clock for sanctions, as required by CAA section 179(a)(2). These deadlines will be removed when we approve a SIP revision addressing the deficiency in Wyoming's nonattainment NSR permitting requirements.

The SIP revisions submitted by the WDEQ on November 6, 2015, involve Chapter 6, Permitting Requirements, Section 13, Nonattainment new source review permit requirements, and Section 14, Incorporation by reference. Chapter 6, Section 13, Nonattainment new source review permit requirements, establishes specific nonattainment new source review permitting requirements. In this revision, the WDEQ has incorporated federal regulatory language—establishing permitting requirements for new and modified major stationary sources in a nonattainment area—from 40 CFR 51.165 and reformatted it into state-specific language that effectively imposes requirements on sources in Wyoming. Additionally, the WDEQ has revised language within the rule to maintain consistency with the State's Prevention of Significant Deterioration (PSD) regulations (WAQSR Chapter 6, Section 4). In addition to the revisions to Chapter 6, Section 13, the November 6, 2015, submittal also updates Chapter 6, Section 14, Incorporation by reference, to adopt by reference from the July 1, 2014, CFR. The State previously submitted SIP revisions for Chapter 6, Section 14 on May 28, 2015 that requested adoption by reference of the CFR that came after July 1, 2013. This action requests an update to those revisions.

III. What is the State process to submit these materials to EPA?

Section 110(k) of the CAA addresses EPA's actions on submissions of revisions to the SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Sections 110(a)(2) and 110(l) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by the state to EPA.

For the November 6, 2015, submittal, the Wyoming Environmental Quality Council (WEQC) conducted a public hearing on September 9, 2015 to hear proposed revisions to the WAQSR from the WDEQ, including the addition of Chapter 6, Section 13, Nonattainment new source review permitting requirements, and Section 14, Incorporation by reference. A notice for submitting written comments on the WDEQ proposed revisions was published on July 14, 2015 and the public comment period ended on August 31, 2015. After reviewing comments received, the WEQC approved the proposed revisions on September 9, 2015. The State has met the procedural requirements for submittal of this SIP revision.

IV. What are the changes that EPA is proposing to approve?

EPA is proposing to approve the portion of Wyoming's November 6, 2015 submittal that adds a new section to the permitting requirements in WAQSR Chapter 6. As mentioned in Section I of this rulemaking, Wyoming's new Chapter 6, Section 13, incorporated federal regulatory language—establishing permitting requirements for new and modified major stationary sources in a nonattainment area—from

40 CFR 51.165 and reformatted it into state-specific language that effectively imposes requirements on sources in Wyoming. The submittal also updated Chapter 6, Section 14, Incorporation by reference.

Section 51.165 in title 40 of the CFR (Permit Requirements) sets out the minimum plan requirements states are to use in developing nonattainment NSR permitting programs. Generally, 40 CFR 51.165 consists of a set of definitions for use in state programs, minimum plan requirements for procedures for determining applicability of nonattainment new source review and for the use of offsets, and minimum plan requirements regarding other source obligations, such as recordkeeping.

Specifically, subparagraphs 51.165(a)(1)(i) through (xlvi) enumerate a set of definitions which states must either use or replace with definitions that a state demonstrates are more stringent or at least as stringent in all respects. Subparagraph 51.165(a)(2) sets minimum plan requirements for procedures to determine the applicability of the nonattainment new source review program to new and modified sources. Subparagraph 51.165(a)(3), (a)(9) and (a)(11) set minimum plan requirements for the use of offsets by sources subject to nonattainment new source review requirements. Subparagraphs (a)(8) and (a)(10) regard precursors, and subparagraphs (a)(6) and (a)(7) regard recordkeeping obligations. Subparagraph 51.165(a)(4) allows nonattainment new source review programs to treat fugitive emissions in certain ways. Subparagraph 51.165(b) sets minimum plan requirements for new major stationary sources and major modifications in attainment and unclassifiable areas that would cause or contribute to violations of the NAAQS. Finally, subparagraph 51.165(f) sets minimum plan requirements for the use of plant-wide applicability limitations. Please refer to the docket to view a cross-walk table which outlines how Wyoming's Chapter 6, Section 13 rules correlate with the requirements of 40 CFR 51.165.

As explained in detail in our prior disapproval, the May 10, 2011 submittal, by directly incorporating by reference in its entirety 40 CFR 51.165, incorporated language such as ''the plan shall provide'' and ''the plan may provide.'' As a result, the May 10, 2011 submittal did not clearly and unambiguously create obligations for the sources that should be subject to nonattainment NSR requirements. In addition, the May 10, 2011 submittal incorporated language from 40 CFR 51.165 such as ''the plan shall include enforceable procedures''; incorporating this language left the procedures unspecified. Finally, the May 10, 2011 submittal created some inconsistencies with Wyoming's existing approved minor NSR and PSD programs. First, some exemptions for specific source categories that have been approved for the minor NSR program became applicable to nonattainment NSR, which is not allowed. Second, the requirement for best available control technology (BACT) in the minor NSR program became applicable to the nonattainment NSR program instead of the appropriate requirement for lowest achievable emission rate (LAER). Third, the submittal did not clearly specify whether the existing construction ban in the Sheridan course particulate matter (PM_{10}) nonattainment area, adopted by Wyoming to meet nonattainment NSR requirements for that area, continued to apply.

Instead of incorporating 40 CFR 51.165 by reference, the November 6, 2015 submittal adapts the language in 40 CFR 51.165 to remove phrases such as ''the plan shall provide'' and ''the plan may provide,'' and specifies the procedures to be used. In addition, the submittal revises language in 40 CFR 51.165 to specify that the WDEQ is the reviewing authority. In one place, the submittal modifies the term ''building, structure, facility, or installation'' to ''structure, building, facility, equipment, installation, or operation,'' without modifying the substance of the definition of the term, which is permissible. These changes are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include ''a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter.''

2. CAA section 172(c)(5), provides that the plan ''shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].'' By removing language such as ''the plan shall provide,'' the submittal avoids any ambiguity as to whether permits are required.

3. CAA section 173, lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. Wyoming's Chapter 6, Section 13 rules impose these requirements on sources, and the State's proposed plan clearly satisfies the requirements of these statutory provisions.

4. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as ''the plan shall provide'' and ''the plan may provide.''

5. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

6. CAA section 172(c)(7), requires that nonattainment plans, including nonattainment NSR programs required by section 172(c)(5), meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures.

7. CAA section 110(l), provides that EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. As described above, the addition of Chapter 6, Section 13 to the Wyoming SIP would not interfere with sections 110(a)(2) and 110(i) of the Act.

8. Wyoming's SIP revision complies with the requirements of 40 CFR 51.165 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions. The crosswalk table in the docket details how the submittal addresses specific requirements in 40 CFR 51.165.

Wyoming's submittal also addresses the potential conflicts with the State's approved minor NSR and PSD programs that existed in the May 5, 2011 submittal. First, Section 13(c)(i) provides that the exemptions in the minor NSR program (Section 2(k)) shall not apply with regards to applicability of the nonattainment NSR program. Second, Section 13(d)(iv) states that LAER, not BACT, applies to sources subject to nonattainment NSR. Finally, Section 13(f)(iii) clarifies that Section 13 does not apply in the Sheridan PM_{10} nonattainment area; instead the construction ban in Section 2(c)(ii)(B) continues to apply.

We note that the submittal contains provisions relevant to nonattainment NSR programs for $PM_{2.5}$ nonattainment areas. Specifically, in the definition of

''regulated NSR pollutant,'' the submittal provides that sulfur dioxide (SO_2) is a $PM_{2.5}$ precursor, nitrogen oxide (NO_X) is presumed to be a $PM_{2.5}$ precursor, and volatile organic compounds (VOCs) and ammonia are presumed to not be $PM_{2.5}$ precursors. This provision is consistent with the nonattainment NSR regulations promulgated in EPA's May 16, 2008 $PM_{2.5}$ NSR Implementation Rule (73 FR 28321). However, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a decision that remanded the EPA's 2008 $PM_{2.5}$ NSR Implementation Rule. The court found that EPA erred in implementing the $PM_{2.5}$ NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM_{10} precursors (and hence under the court decision, $PM_{2.5}$ precursors) ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' Accordingly, nonattainment NSR programs that are submitted for $PM_{2.5}$ nonattainment areas must regulate all $PM_{2.5}$ precursors, *i.e.,* SO_2, NO_X, VOC, and ammonia, unless the Administrator determines that such sources of a particular precursor do not contribute significantly to nonattainment in the nonattainment area.

Although the State's submittal only requires regulation of SO_2 and NO_X as $PM_{2.5}$ precursors, the State of Wyoming has no nonattainment areas for the $PM_{2.5}$ standards. Accordingly, the EPA finds it reasonable to conclude that major sources of VOCs and ammonia do not contribute significantly to $PM_{2.5}$ nonattainment within the State. Thus, there is no need at this time for the State to regulate VOCs or ammonia as $PM_{2.5}$ precursors in its nonattainment NSR permitting program,[1] and so we are proposing to approve the submittal's $PM_{2.5}$ precursor provisions. Should EPA in the future designate an area in Wyoming as nonattainment for $PM_{2.5}$, the State would have the obligation to ensure that the nonattainment NSR program met all applicable requirements for $PM_{2.5}$, including appropriate control of precursors. See CAA sections 172(c)(5) and 189(a)(1)(A).

[1] The submittal does properly regulate VOCs as an ozone precursor, as intended by the State to address nonattainment NSR requirements for the UGRB ozone nonattainment area.

V. What action is EPA proposing today?

For the reasons described in section IV, the EPA is proposing to approve Wyoming's November 6, 2015 submittal which adds Chapter 6, Section 13 and updates Chapter 6, Section 14. Our action is based on an evaluation of Wyoming's rules against the requirements of CAA sections 110(a)(2)(A), 110(a)(2)(C), 110(l) 172(c)(5), 173, 110(i), 172(c)(7), regulations at 40 CFR 51.165, and other requirements.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the WAQSR that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas as described in section IV 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 rule's preamble for more information).

VII. Statutory and Executive Orders Review

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 approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 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, Feb. 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

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

Dated: February 11, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–04403 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2014–0464; FRL–9943–02–OAR]

EPA Responses to Certain State Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted on its Internet Web site responses to certain state designation recommendations for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The EPA invites the public to review and provide input on its responses during the comment period specified in the **DATES** section. The EPA sent its responses directly to the states on or about February 16, 2016. The EPA intends to make final the designation determinations for the areas of the country addressed by these responses no later than July 2, 2016.

DATES: Comments must be received on or before March 31, 2016. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0464, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Rhea Jones, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–2940, email at *jones.rhea@epa.gov.* For questions regarding areas in EPA Region 1, please contact Leiran Biton, U.S. EPA, telephone (617) 918–1267, email at *biton.leiran@epa.gov.* For questions regarding areas in EPA Region 2, please contact Henry Feingersh, U.S. EPA, telephone (212) 637–3382, email at *feingersh.henry@epa.gov.* For questions regarding areas in EPA Region 3, please contact Irene Shandruk, U.S. EPA, telephone (215) 814–2166, email at *shandruk.irene@epa.gov.* For questions regarding areas in EPA Region 4, please contact Twunjala Bradley, U.S. EPA, telephone (404) 562–9352, email at *bradley.twunjala@epa.gov.* For questions regarding areas in EPA Region 5, please contact John Summerhays, U.S. EPA, telephone (312) 886–6067, email at *summerhays.john@epa.gov.* For questions regarding areas in EPA Region 6, please contact Dayana Medina, U.S. EPA, telephone (214) 665–7241, email at *medina.dayana@epa.gov.* For questions regarding areas in EPA Region 7, please contact David Peter, U.S. EPA, telephone (913) 551–7397, email at *peter.david@epa.gov.* For questions regarding areas in EPA Region 8, please contact Adam Clark, U.S. EPA, telephone (303) 312–7104, email at *clark.adam@epa.gov.* For questions regarding areas in EPA Region 9, please contact Gwen Yoshimura, U.S. EPA, telephone (415) 947–4134, email at *yoshimura.gwen@epa.gov.* For questions regarding areas in EPA Region 10, please contact John Chi, U.S. EPA, telephone (206) 553–1185, email at *chi.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On June 2, 2010, the EPA Administrator signed a notice of final rulemaking that revised the primary SO_2 NAAQS (75 FR 35520; June 22, 2010) after review of the existing two primary SO_2 standards promulgated on April 30, 1971 (36 FR 8187). The EPA established the revised primary SO_2 NAAQS at 75 parts per billion (ppb) which is attained when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb.

The process for designating areas following promulgation of a new or revised NAAQS is contained in the Clean Air Act (CAA) section 107(d) (42 U.S.C. 7407). After promulgation of a new or revised NAAQS, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to the EPA. The EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised NAAQS. By no later than 120 days prior to promulgating designations, the EPA is required to notify states and tribes, as appropriate, of any intended modifications to an area designation or boundary recommendation that the EPA deems necessary.

The EPA completed an initial round of SO_2 designations for certain areas of the country on July 25, 2013, designating 29 areas in 16 states as nonattainment. Pursuant to a March 2, 2015, court-ordered schedule,[1] the EPA must complete SO_2 designations for the remaining areas of the country by three specific deadlines: July 2, 2016, December 31, 2017, and December 31, 2020. This current second round of designation addresses two groups of areas: (1) Areas that have newly monitored violations of the 2010 SO_2 NAAQS, and (2) areas that contain any stationary sources that had not been announced as of March 2, 2015, for retirement and that according to the EPA's Air Markets Database emitted in 2012 either (i) more than 16,000 tons of SO_2, or (ii) more than 2,600 tons of SO_2 with an annual average emission rate of at least 0.45 pounds of SO_2/mmBTU. The EPA has determined that the areas meeting these criteria are associated with 68 stationary sources and the island of Hawaii.

On or about February 16, 2016, the EPA notified affected states of its intended designation of certain specific areas as either nonattainment, unclassifiable/attainment, or unclassifiable for the 2010 SO_2 NAAQS. Those states now have an opportunity to demonstrate why they believe an intended modification by the EPA regarding those specified areas may be inappropriate. In 2015, the EPA encouraged these states to provide additional information for the EPA to consider in finalizing designations for these specified areas.

The purpose of this notice of availability is to solicit input from interested parties other than states on

[1] *Sierra Club* v. *McCarthy,* No. 3–13–cv–3953 (SI) (N.D. Cal. Mar. 2, 2015).

the EPA's recent responses to the state designation recommendations for the 2010 SO_2 NAAQS. These responses, and their supporting technical analyses, can be found on the EPA's Internet Web site at *http://www.epa.gov/so2designations* and also in the public docket for SO_2 designations at Docket ID No. EPA–HQ–OAR–2014–0464. The CAA section 107(d) provides a process for air quality designations that involves recommendations by states and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final area designations and boundaries. The EPA is not required under the CAA section 107(d) to seek public comment during the designation process, but is electing to do so for these areas under the 2010 SO_2 NAAQS in order to gather additional information for the EPA to consider before making final designations for the specific areas addressed in the EPA's recent responses to states. The EPA invites public input on its responses to states regarding these areas during the 30-day comment period provided in this notice of availability. In order to receive full consideration, input from the public must be submitted by March 31, 2016. At this time, the EPA is not asking for public comments on other areas for which states and tribes have submitted designation recommendations, beyond those to which the EPA has provided the responses that are the subject of this proposed action. This notice of availability and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to the CAA section 107(d).

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments and locating relevant public documents.

In establishing nonattainment area boundaries for a particular area, the EPA is required to identify both the area that does not meet the standard and any nearby area contributing to the area that does not meet the standard. We are particularly interested in receiving comments, supported by relevant information, if you believe that a specific geographic area that the EPA is proposing to identify as a nonattainment area should not be categorized by the CAA section 107(d) criteria as nonattainment, or if you believe that a specific nearby area not proposed by the EPA to be identified as contributing to a nonattainment area should in fact be categorized as contributing to nonattainment using the CAA section 107(d) criteria. Please be as specific as possible in supporting your views.

- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Provide your input by the comment period deadline identified.

The EPA intends to complete designations for the areas subject to this round no later than July 2, 2016. The EPA is not yet prepared to respond to state and tribal area designation recommendations, or seek public input thereon, for other areas that are not yet designated for the 2010 SO_2 NAAQS. The EPA will address those areas in the last two rounds of designations scheduled for 2017 and 2020. Additional information on the EPA's intended approach for addressing designations for all areas can be found on the EPA's SO_2 implementation Web site at *http://www3.epa.gov/airquality/sulfurdioxide/implement.html.* Please be advised that, in this action, the EPA is not proposing as a regulatory action and is not soliciting public comments on the intended approach for these other areas, regarding either designations or implementation.

II. Instructions for Submitting Public Comments and Internet Web Site for Rulemaking Information

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

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Tiffany Purifoy, OAQPS CBI Officer, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0878, email at *purifoy.tiffany@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2014–0464.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

B. Where can I find additional information for this rulemaking?

The EPA has also established a Web site for this rulemaking at *http://www3.epa.gov/so2designations.* The Web site includes the EPA's state and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: February 16, 2016.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–04468 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 40
Tuesday, March 1, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LPS–15–0050]

United States Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice.

SUMMARY: This document makes amendments to the United States Standards for Grades of Carcass Beef in order to make administrative changes and provide several points of clarification.

DATES: *Effective:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Standardization Branch, Quality Assessment Division, LPS Program, AMS, USDA, 1400 Independence Ave. SW., STOP 0258, Washington, DC 20250; Phone (202) 690–3148.

SUPPLEMENTARY INFORMATION: In order to update certain elements in United States Standards for Grades of Carcass Beef, this document makes administrative changes to reflect the practices and advances in commercial practices and the current beef carcass weights. These changes provide clarity on the way that the United States Standards for Grades of Carcass Beef may currently be applied with the use of camera technology; provide more up-to-date examples that reflect heavier carcass weights; and make administrative changes to reflect current organizational structures and titles.

Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Carcass Beef do not appear in the Code of Federal Regulations but are maintained by USDA and are available on the internet at *http://www.ams.usda.gov/grades-standards/beef*. To change the United States Standards for Grades of Carcass Beef, AMS utilized the procedures it published in the August 13, 1997, **Federal Register** and that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

As additional background, AMS sought comments through a Notice [FR Doc. 2014–19309] published on November 13, 2014. AMS received 21 comments addressing a variety of topics. Eight of the comments strongly recommended that any revision should be based on sound science and an abundance of supporting data. Fourteen focused on either the yield grade or quality grade. Eight addressed cattle production issues while two suggested incorporating tenderness measures. Twelve comments supported, one did not, revising/updating the yield grade portion of the standard. One of the factors used in determining yield grade, ribeye area, had eight comments supporting a closer examination of this factor while one did not. Three recommended that a meat yield be used in lieu of yield grade. Twelve comments supported revising beef maturity, one of the factors used in determining quality grade, while one did not. Seven comments were received regarding instrument grading. Five of these advocated the use of instruments in order to avoid the variation between plants and geographic location. One recommended keeping the existing marbling lines (used in establishing quality grade) while one advocated a reappraisal of the Prime line. This information can all be accessed at *http://www.ams.usda.gov/rules-regulations/2014-standards-carcass-beef.*

At this time, AMS is only addressing administrative changes as outlined at the beginning of this document. However, AMS is still evaluating information related to more substantive changes to the U.S. Standards for Grades of Carcass Beef. Should the Agency determine that any of the specific substantive changes be warranted in the future, AMS will propose such changes so that interested stakeholders may comment.

PART 104—APPLICATION OF STANDARDS FOR GRADES OF CARCASS BEEF

1. Amend section 104 by revising paragraph (d) to read as follows:

(d) The Department uses photographs, and other objective aids or devices designated by the USDA, AMS [2] in the correct interpretation and application of the standards.

2. Amend footnote 2 to read as follows:

[2] Information concerning such devices and their use may be obtained from AMS' Livestock, Poultry and Seed Program.

3. Amend section 104 by revising paragraph (o) to read as follows:

(o) These standards are applicable to the grading of beef throughout the full range of maturity within which cattle are marketed. However, in steer, heifer, and cow carcasses, the range of maturity permitted within each of the grades varies considerably. The Prime, Choice, Select, and Standard grades are restricted to beef from young cattle; the Commercial grade is restricted to beef from cattle too mature for Prime, Choice, and Standard, and the Utility, Cutter, and Canner grades may include beef from animals of all ages. By definition, bullock carcasses are restricted to those whose evidences of maturity do not exceed those specified for the juncture of the two youngest maturity groups referenced in the standards for steer, heifer, and cow carcasses. Except for the youngest maturity group and the Choice grade in the second maturity group, within any specified grade, the requirements for marbling increase progressively with evidences of advancing maturity. In the youngest maturity group, the marbling requirements do not increase progressively with evidences of advancing maturity. For each grade, the firmness requirements are different for each maturity group, but, within each maturity group, the firmness requirements do not increase progressively with evidences of advancing maturity. Also, regardless of the extent to which marbling may

exceed the minimum of a grade, a carcass must meet the minimum firmness requirements for its maturity to qualify for that grade. To facilitate the application of these principles, the standards recognize five different maturity groups and seven different degrees of marbling. The five maturity groups are identified in Figure 1 as A, B, C, D, and E in order of increasing maturity. The limits of these five maturity groups are specified in the grade descriptions for steer, heifer, and cow carcasses. The A maturity portion of the figure is the only portion applicable to bullock carcasses. The degrees of marbling referenced in the specifications, in order of descending quantity are: Slightly abundant, moderate, modest, small, slight, traces, and practically devoid. However, for carcass evaluation programs and other purposes, three higher degrees are recognized—moderately abundant, abundant, and very abundant. Illustrations of the lower limits of nine of these ten degrees of marbling are available from the USDA.

4. Amend section 104 by revising paragraph (u) to read as follows:

(u) The area of the ribeye is determined where this muscle is exposed by ribbing. This area usually is estimated subjectively; however, it may be measured. An increase in the area of ribeye increases the percent of retail cuts—a change of 1 square inch in area of ribeye changes the yield grade by approximately 30 percent of a yield grade.

5. Amend section 104 by revising paragraph (w) to read as follows:

(w) The standards include a mathematical equation for determining yield grade. This grade is expressed as a whole number. For example, if the computation results in a designation of 3.9, the final grade is 3—it is not rounded to 4. If yield grade is determined through objective means (*e.g.* instrumentation) the resulting designation may include a fractional part. Regardless of the means of determination, the aggregate is dropped for consideration of grade application.

6. Amend section 104 by revising paragraph (x) to read as follows:

(x) The yield grade standards for each of the first four yield grades list characteristics of two carcasses of two different weights together with descriptions of the usual fat deposition pattern on various areas of the carcass. These descriptions are not specific requirements—they are included only as illustrations of carcasses which are near the borderlines between groups. For example, the characteristics listed for Yield Grade 1 represent carcasses which are near the borderline of Yield Grades 1 and 2. These descriptions facilitate the subjective determination of the yield grade without making detailed measurements and computations. The yield grade for most beef carcasses can be determined accurately on the basis of a visual appraisal. Objective detailed measurements extend the accuracy to fractional parts.

PART 105—SPECIFICATIONS FOR OFFICIAL UNITED STATES STANDARDS FOR GRADES OF CARCASS BEEF (YIELD)

6. Amend section 105 by revising paragraph (b) to read as follows:

(b) The following descriptions provide a guide to the characteristics of carcasses in each yield grade to aid in determining yield grades subjectively.

(1) Yield Grade 1. (i) A carcass in Yield Grade 1 usually has only a thin layer of external fat over the ribs, loins, rumps, and clods and slight deposits of fat in the flanks and cod or udder. There is usually a very thin layer of fat over the outside of the rounds and over the tops of the shoulders and necks. Muscles are usually visible through the fat in many areas of the carcass.

(ii) A 700-pound carcass of this yield grade which is near the borderline of Yield Grades 1 and 2 might have two-tenths inch of fat over the ribeye, 12.5 square inches of ribeye, and 1.5 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 1,100-pound carcass of this yield grade which is near the borderline of Yield Grades 1 and 2 might have four-tenths inch of fat over the ribeye, 19.1 square inches of ribeye, and 2. 0 percent of its weight in kidney, pelvic, and heart fat.

(2) Yield Grade 2. (i) A carcass in Yield Grade 2 usually is nearly completely covered with fat but the lean is plainly visible through the fat over the outside of the rounds, the tops of the shoulders, and the necks. There usually is a slightly thin layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is slightly thick. There are usually small deposits of fat in the flanks and cod or udder.

(ii) A 700-pound carcass of this yield grade which is near the borderline of Yield Grades 2 and 3 might have five-tenths inch of fat over the ribeye, 12.3 square inches of ribeye, and 2.5 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 1,100-pound carcass of this yield grade which is near the borderline of Yield Grades 2 and 3 might have six-tenths inch of fat over the ribeye, 18.1 square inches of ribeye, and 3.0 percent of its weight in kidney, pelvic, and heart fat.

(3) Yield Grade 3. (i) A carcass in Yield Grade 3 usually is completely covered with fat and the lean usually is visible through the fat only on the necks and the lower part of the outside of the rounds. There usually is a slightly thick layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is moderately thick. There usually are slightly large deposits of fat in the flanks and cod or udder.

(ii) A 700-pound carcass of this yield grade which is near the borderline of Yield Grades 3 and 4 might have seven-tenths inch of fat over the ribeye, 11.0 square inches of ribeye, and 3.0 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 1,100-pound carcass of this yield grade which is near the borderline of Yield Grades 3 and 4 might have eight-tenths inch of fat over the ribeye, 16.9 square inches of ribeye, 3.5 percent of its weight in kidney, pelvic, and heart fat.

(4) Yield Grade 4. (i) A carcass in Yield Grade 4 usually is completely covered with fat. The only muscles usually visible are those on the shanks and over the outside of the plates and flanks. There usually is a moderately thick layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is thick. There usually are large deposits of fat in the flanks and cod or udder.

(ii) A 700-pound carcass of this yield grade which is near the borderline of Yield Grades 4 and 5 might have nine-tenths inch of fat over the ribeye, 9.8 square inches of ribeye, and 3.5 percent of its carcass weight in kidney, pelvic, and heart fat.

(iii) A 1,100-pound carcass of this yield grade which is near the borderline of Yield Grades 4 and 5 might have one inch of fat over the ribeye, 15.6 square inches of ribeye, and 4.0 percent of its weight in kidney, pelvic and heart fat.

(5) Yield Grade 5. A carcass in Yield Grade 5 usually has more fat on all of the various parts, a smaller area of ribeye, and more kidney, pelvic, and heart fat than a carcass in Yield Grade 4.

Authority: 7 U.S.C. 1621–1627.

Dated: February 25, 2016.

Elanor Starmer,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2016–04493 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities: Proposed Collection; Comment Request—FNS–380, Worksheet for the Supplemental Nutrition Assistance Program Quality Control Reviews

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 this proposed information collection. This is a revision of a currently approved collection of FNS–380, Worksheet for the Supplemental Nutrition Assistance Program's Quality Control Reviews.

DATES: Written comments must be received on or before May 2, 2016.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Stephanie Proska, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Stephanie Proska at 703–305–0928 or via email to *SNAPHQ–WEB@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 responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Stephanie Proska at 703–305–2437.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Review Schedule.

Form Number: FNS 380.

OMB Number: 0584–0074.

Expiration Date: May 31, 2016.

Type of Request: Revision of a currently approved collection.

Abstract: Form FNS–380, is a Supplemental Nutrition Assistance Program worksheet used to determine eligibility and benefits for households selected for review in the quality control sample of active SNAP cases. We estimate the total reporting burden for the collection of information to support SNAP quality control as 517,639.20 hours. This includes approximately 8.9 hours for State agencies to analyze each household case record including planning and carrying out the field investigation; gathering, comparing, analyzing and evaluating the review data and forwarding selected cases to the Food and Nutrition Service for Federal validation, totaling approximately 490,096.30 hours for the entire caseload. We are also including an average interview burden of 30 minutes (0.5 hours) for each household, creating a reporting burden for them for 27,534.00 hours. Additionally, we estimate the recordkeeping burden per record for the State agency to be 0.0236 hours, thereby making the recordkeeping burden associated with this information collection for the State agency to be 1,299.61 hours. The total estimated reporting and recordkeeping burden for this collection is 518,938.81 hours and 165,201 total annual responses for reporting and recordkeeping.

The reporting and recordkeeping burden for this form was previously approved under OMB clearance number 0584–0074. OMB approved the burden through May 31, 2016. Based on the most recent table of active case sample sizes and completion rates (FY2014), we estimate 55,067 FNS–380 worksheets and interviews will now be completed annually. This is an increase of 3,106 responses from the estimate made to substantiate the current collection. The increase in response is a result of an increase in the number of active cases being pulled for review over the minimum required review amount. We are requesting a three-year approval from OMB for this information collection.

Affected Public: 55,120 (Households, State, Local and Tribal Government: Respondent groups identified include: 53 State agencies and 55,067 Households.)

Estimated Number of Responses per Respondent: 2.997115 (The total number of responses per household is 1 and the total estimated number of responses per State, Local and Tribal Government respondents is 1,039.)

Estimated Total Annual Responses: 165,201 (This includes 55,067 sampled active cases for QC review, 55,067 households to report, and the same 55,067 records being kept by the 53 State agencies.)

Estimated Time per Response: 3.1411999 (The estimated time of response for State agencies to report is approximately 534 minutes, 30 minutes for households to report, and the estimated response time for State agencies to do recordkeeping is approximately 1.42 minutes. Therefore, the total time per response is approximately 565.42 minutes or 9.42 hours.)

Estimated Total Annual Burden on Respondents: 518,929.38 hours. (This includes 491,395.88 for SA reporting and recordkeeping) + 27,533.50 I/H reporting only) See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number of respondents	Estimated total responses annually per respondent	Estimated total annual responses (Col. bxc)	Estimated average number of of hours per response	Estimated total hours (Col. dxe)
Reporting and Recordkeeping Burden:.					
State Agencies (SA) *Reporting*	53	1,039	55,067	8.9	490,096.30
State Agencies *Recordkeeping*	53	1,039	55,067	0.0236	1,299.58
Subtotal States Reporting And Recordkeeping	53	2,078	110,134	4.4617998	491,395.88

Respondent	Estimated number of respondents	Estimated total responses annually per respondent	Estimated total annual responses (Col. bxc)	Estimated average number of of hours per response	Estimated total hours (Col. dxe)
Individuals/Households (I/H)*Reporting*	55,067	1	55,067	.5	27,533.50
Subtotal Households Reporting Only	55,067	1	55,067	.5	27,533.50
Grand Total Reporting & Recordkeeping Burden for the entire collection I/H and SA	55,120	2.99711	165,201	3.1411999	518,929.38

Dated: February 23, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–04382 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0103]

General Conference Committee of the National Poultry Improvement Plan; Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary of Agriculture is soliciting nominations for the election of regional membership, a member-at-large, and alternates to the General Conference Committee of the National Poultry Improvement Plan.

DATES: Consideration will be given to nominations received on or before June 15, 2016.

ADDRESSES: Completed nomination forms should be mailed, faxed, or emailed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Denise L. Brinson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5173; phone (770) 922–3496; fax (770) 922–3498; email *denise.l.brinson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP) is the Secretary's Advisory Committee on poultry health. The Committee serves as a forum for the study of problems relating to poultry health and as necessary makes specific recommendations to the Secretary concerning ways the U.S. Department of Agriculture may assist the industry in addressing these problems. The Committee assists the Department in planning, organizing, and conducting the Biennial Conference of the NPIP. The Committee recommends whether new proposals should be considered by the delegates to the Biennial Conference.

The Committee consists of an elected member-at-large who is a NPIP participant and an elected member (and alternate) from each of six regions. Terms will expire for three of the current regional members of the Committee as well as the member-at-large in July 2016. We are soliciting nominations from interested organizations and individuals to replace the member-at-large and members on the Committee from the South Atlantic region (Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Puerto Rico, South Carolina, Virginia, and West Virginia), the West North Central region (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota), and the South Central region (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas).

Selection of members and their alternates is determined by a majority vote of the NPIP delegates from the respective region. The voting will be by secret ballot of official delegates from the respective region, and the results will be recorded. The member-at-large will be elected by all official delegates. There must be at least two nominees for each position. To ensure the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, at least one nominee from each of the three regions must have a demonstrated ability to represent underrepresented groups (minorities, women, persons with disabilities, and persons with limited English proficiency). All members serve for 4 years, subject to the continuation of the Committee by the Secretary of Agriculture.

Nominees wishing to be considered for election must complete Form AD–755. Nomination forms may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 24th day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–04378 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0104]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The General Conference Committee meeting will be held on August 30, 2016–September 1, 2016, from 1:30 p.m. to 5:30 p.m.

ADDRESSES: The General Conference Committee meeting will be held at the Hyatt Regency Bellevue, 900 Bellevue Way NE., Bellevue, WA 98004.

FOR FURTHER INFORMATION CONTACT: Dr. Denise Brinson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Topics for discussion at the upcoming meeting include:

1. Salmonella update.
2. New diagnostic tests seeking NPIP approval.
3. Centers for Disease Control and Prevention report on Salmonella infections.
4. Agency avian influenza update.
5. Mycoplasma update.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2015–0104 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 24th day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–04379 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: WIC Program Regulations

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 this proposed information collection. This collection is a revision of a currently approved collection to add the submittal of Authorized Product Lists in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) into the collection.

DATES: Written comments must be received on or before May 2, 2016.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jerilyn Malliet, Chief, WIC EBT Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302. Comments may also be submitted via fax to the attention of Jerilyn Malliet at 703–305–2196 or via email to *Jerilyn.Malliet@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 responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jerilyn Malliet at 703–305–2746.

SUPPLEMENTARY INFORMATION:

Title: WIC Program Regulations.
Form Number: N/A.
OMB Number: 0584–0043.
Expiration Date: April 30, 2017.
Type of Request: Revision of a currently approved collection.

Abstract: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides low-income pregnant, breastfeeding, and postpartum women, infants, and children up to age five with nutritious supplemental foods. The program also provides nutrition education including breastfeeding promotion and support, and referrals to health and social services. The WIC Program is administered by the USDA Food and Nutrition Service (FNS). FNS provides grant funding and issues regulations which are utilized by WIC State agencies to operate the WIC Program and distribute benefits through local WIC clinics. The program operates throughout the 50 States, in the District of Columbia, Guam, Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, the Virgin Islands, and in 34 Indian Tribal Organizations. The Healthy Hunger-Free Kids Act of 2010 (hereinafter referred to as the HHFKA) (Pub. L. 111–296) requires all WIC State agencies to convert to an Electronic Benefit Transfer (EBT) benefit delivery method by October 1, 2020. A Proposed Rule regarding WIC EBT-related provisions from the HHFKA was published on February 28, 2013 (**Federal Register** February 28, 2013 at 79 FR 13549). The WIC EBT-related provisions of the HHFKA and other EBT implementation requirements included in this final rule are: (1) A definition of EBT; (2) a mandate that all WIC State agencies implement an EBT delivery method by October 1, 2020; (3) system management and reporting requirements; (4) revisions to current provisions that prohibit imposition of costs on vendors; (5) a requirement for the Secretary of Agriculture to establish minimum lane equipage standards; (6) a requirement for the Secretary of Agriculture to establish technical standards and operating rules; and (7) a requirement that State agencies use the National Universal Product Code (NUPC) database.

While a conforming amendment has added two additional State Plan requirements in addition to the requirement for an annual EBT status update, the Department considers these to be minimal reporting burden. The annual status report replaces existing updates required for benefit delivery methods using paper food instruments. The two conforming amendments clarify content for EBT delivery replacing the existing paper food instrument or other food delivery content.

The final rule at 7 CFR 246.12(y) requires each State agency to have an active EBT project within 90 days of the effective date of the regulation and, if they have not yet begun EBT planning, to submit their EBT Planning Advanced Planning Document (PAPD) for FNS approval. Under OMB Control Number 0584–0043, it is estimated that 15 APDs would be submitted each year As a result, the current estimate of 15 submissions per year is unchanged. The existing recordkeeping and reporting requirements related to APD documents, which were approved under OMB Control Number 0584–0043, will not change as a result of this rule.

WIC State agencies are required to authorize eligible foods on their WIC food list by federal regulations at 7 CFR part 246.10. Under these regulations, State agencies must review food products for eligibility in accordance with Federal regulations and State agency policies. State agencies are not required to authorize all food products eligible under federal regulations, but generally select foods based on factors such as cost, availability and

acceptability to participants. After review, the State agency develops a list of food items available to WIC participants for purchase. State agencies require authorized vendors (*i.e.,* stores authorized to provide WIC foods) to ensure only WIC-authorized food items are purchased. Under an EBT delivery method, authorized WIC vendors have programmed their point-of-sale systems to identify WIC authorized foods and their associated Universal Product Code (UPC) or Price Look-Up (PLU) code as individual products are scanned at the checkout lane.

WIC State agencies using an EBT delivery method provide their authorized vendors with an electronic file containing the State agency's current list of authorized foods. This is known as the Authorized Products List (APL). In EBT system designs, food item UPCs or PLU codes are scanned at the checkout lane and then matched to the UPC or PLU listed on the State specific APL. Food items matching the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available food balance, cannot be purchased with WIC benefits.

At present, under OMB Control Number 0584–0043, each State agency provides an updated food list annually as part of the State Plan requirements at 7 CFR 246.10(b)(2)(i); and as the food lists are updated. Section 246.12(cc) requires each State agency to use the NUPC database, at a minimum, to submit their APL as they begin statewide rollout and as it is updated. The Department has determined that a State agency operating an EBT delivery method may satisfy these annual and 'as updated' reporting requirements by submitting the APL in place of the food list because it contains the brands, sizes and quantities allowed by each WIC State agency. The APLs are updated as new products are added or removed by each WIC State agency. The annual burden for the next three years is based on an average of 37 WIC State agencies expected to be operating WIC EBT during the next three years and who will distribute APL's to their WIC-authorized vendors. This estimate of 37 EBT operational State agencies is based on implementation projects approved in December 2015 by the Department. Each State agency is estimated to update the APL 2.5 times per week totaling 130 updates per year. Approximately 30 seconds (0.0083 hours) is the estimated time necessary to submit the APL to the Department.

FNS estimates that these final rule provisions will increase the reporting burden for the WIC state and local agencies by 40 hours and 4,810 responses. This final rule does not impact the remaining reporting burden for this collection, nor does it impact the recordkeeping burden. FNS will submit an Information Collection Request clearance package to the Office of Management and Budget (OMB) based on the provisions of this final rule and comments received on this 60-Day Notice. These amended information collection requirements will not become effective until approved by OMB. When OMB has approved these information collection requirements, FNS will publish a separate action in the **Federal Register** announcing the approval.

Reporting Burden

Affected Public: The final EBT rule only affects the State, Local, and Tribal Governments respondent group and impacts only the WIC State agencies currently operating WIC EBT systems. While this information collection burden also covers businesses and other for profit organizations, and individuals and households, the rule does not increase the reporting burden for these other respondents.

Estimated Number of Respondents: Out of a total of 9,011,137 respondents for this collection, FNS estimates that these final rule provisions will affect an average of 37 WIC State agencies. This estimate includes 25 WIC State agencies operating EBT in 2016, 38 WIC State agencies operating EBT in 2017, and 47 WIC State agencies operating EBT in 2018. The annual average of 37 State agencies is the sum of the number of State agencies estimated to be EBT operational divided by three years.

Estimated Frequency of Responses per Respondent per year: 2.78 responses. FNS estimates that 37 WIC State agencies will submit an APL 2.5 times per week. Submitting 2.5 APLs per week over 52 weeks per year equals 130 responses per WIC State agency annually. FNS estimates that this revision will change the frequency of State agency responses to 6,533.

Estimated Total Annual Responses: FNS estimates that the final rule provisions concerning the submission of the APL will add 4,810 responses (37 WIC State agencies × 130 estimated responses per respondent) to the collection, increasing the overall total estimated annual responses to 25,046,888.

Estimated Time per Response: FNS estimates that it will take each State agency 30 seconds (0.0083 hours) to submit the APL. The estimated time per response for the state or local agencies is 0.20 and the overall estimated time per response is 0.13. WIC State agencies are not expected to expend additional time to gather or format the requested information for the federal government reporting requirement since this information is already collected in support of each State agency's EBT operations. The estimated time required to maintain and troubleshoot electronic systems is amortized over the expected number of responses.

Estimated Total Annual Burden on Respondents: FNS estimates that the final rule provisions will add 40 hours (4,810 responses × 0.0083 hours per response) to the total burden for the State and local agencies, increasing it from 2,516,924 to 2,516,964. This in turn increases the overall reporting burden for this collection to 3,324,780 burden hours.

Current OMB Inventory: 3,324,740 hours.

Difference (Burden Revisions Requested Due to the Final Rule): 40 hours.

Recordkeeping Burden

Affected Public: State, Local, and Tribal Agencies (including Indian Tribal Organizations and U.S. Territories).

Estimated Number of Recordkeepers: 11,929.

Estimated Number of Records: 3,011.

Total Estimated Annual Records: 35,919,470.

Estimated Annual Hours per Recordkeeper: .02 hours.

Estimated Total Recordkeeping Burden Hours: 695,758.

Current OMB Inventory: 695,758.

Difference (Burden Revisions Requested Due to the Final Rule): None.

Estimated Grand Total for Reporting and Recordkeeping Burden: 4,020,537 hours.

The estimated total annual reporting and recordkeeping burden for each type of respondent is shown below:

Respondent	Estimated number of respondents	Frequency of responses per respondent (annually)	Total annual responses (Col. b × c)	Estimated average # of hours per response	Estimated total hours (Col. d × c)
Reporting Burden:					
State, Local, and Indian Tribal Governments (WIC State agencies and WIC local agencies)	1,929	6,533	12,602,967	0.20	2,516,964
Business or Other For-Profit (WIC Authorized Vendors)	48,621	2.23	108,302	1.77	191,987
Individuals and Households (WIC Participants)	8,960,587	1.38	12,335,620	0.05	615,829
Reporting Grand Total	9,011,137	2.78	25,046,888	0.13	3,324,780
Respondent	Estimated number of ecordkeepers	Estimated number of records	Total estimated annual ecords	Estimated time (hours)	Estimated burden hours
Recordkeeping Burden:					
State, Local, and Tribal Government (State and Local agencies, including Indian Tribal Organizations and U.S. Territories)	11,929	3,011	35,919,470	0.02	695,758
Grand Total—Reporting and Recordkeeping	9,023,066	3,014	60,966,358	0.15	4,020,537

Dated: February 19, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–04262 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed collection; Comment Request—Senior Farmers' Market Nutrition Program (SFMNP)

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 this proposed information collection. This collection is a revision of a currently approved collection for the Senior Farmers' Market Nutrition Program (SFMNP).

DATES: Written comments must be received on or before May 2, 2016.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Written comments may be sent to: Kurtria Watson, Chief, Policy Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 528, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, contact Kurtria Watson, Chief, Policy Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Dr., Room 528, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

Title: Senior Farmers' Market Nutrition Program (SFMNP).

Form Number: FNS 683A.

OMB Number: 0584–0541.

Expiration Date: May 31, 2016.

Type of Request: Revision of a currently approved collection.

Abstract: Section 4203 of the Agricultural Act of 2014 (Pub. L. 113–79, also known as the Farm Bill) reauthorized the Senior Farmers' Market Nutrition Program (SFMNP) through fiscal year 2018; a prior law (the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171)) gave the Department of Agriculture the authority to promulgate regulations for the operation and administration of the SFMNP. These regulations are published at 7 CFR part 249. The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, honey and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs; and to develop or aid in the development of new and additional farmers' markets, roadside stands, and CSA programs.

USDA published a final rulemaking on the SFMNP on December 6, 2006 (71 FR 74618), that contained an estimated information collection burden based on the rule's requirements for program operation and administration. SFMNP financial and program information is collected on the FNS Form 683A and is submitted annually to the Food and Nutrition Service (FNS) by participating SFMNP State agencies. This information is used to reconcile and close out grants in accordance with the requirements of 7 CFR 3016.23(b) and 7 CFR 3016.41(a)(1). Program information is also used by FNS for program planning purposes, and for reporting to Congress as needed. The previous SFMNP information collection burden was

approved by the Office of Management and Budget (OMB) for 3 years, effective May 2013, under OMB#0584–0541. The Department is now soliciting comments on the accuracy and reasonableness of the renewal of this estimated burden.

The estimated total annual Reporting and Recordkeeping burden for SFMNP information collection is 422,023 hours. This estimated total burden is 52,250 hours lower than the previously approved collection burden. While the number of State agencies has increased slightly, several SFMNP State agencies report a decrease in the number of participants served and number of authorized farmers' markets. In addition, several calculation errors were corrected in this revision, further reducing the estimate. See the table below for estimated total annual burden for each type of respondent.

Affected Public: Respondents include State agencies, local agencies, individuals/households (participants), and authorized SFMNP farms (farmers, farmers' markets, roadside stands, and CSA programs).

Estimated Number of Respondents: The total estimated number of respondents is 804,714. This includes: State agencies, local agencies, individuals/households (participants), and authorized SFMNP farms (farmers, farmers' markets, roadside stands, and CSA programs).

Estimated Number of Responses per Respondent: The estimated number of responses per respondent across the entire collection is 3. For the reporting burden it is 2, while recordkeeping is 15,390.

Estimated Total Annual Responses: 2,408,711. The total reporting responses are 1,608,451, while the total recordkeeping responses are 800,260.

Estimated Time per Response: The estimated time of response averages 0.18 hours for all participants. For the reporting burden, the estimated time of response varies from approximately 1 minute to 160 hours, while the estimated time of response for the recordkeeping burden varies from 15 minutes to 40 hours, depending on the respondent group.

Estimated Total Annual Burden on Respondents: 422,023 hours. The reporting and recordkeeping burden is 219,579 and 202,444 hours, respectively. See the table below for estimated total annual burden for each type of respondent.

SENIOR FARMERS' MARKET NUTRITION PROGRAM BURDEN COLLECTION CHART

Regulation section	Title	Estimated number of respondents	Reports filed annually	Total annual response	Estimated hrs/ response	Annual burden hrs
Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)						
Reporting:						
249.3(d)	Local Agency Applications	1040	.5	520	2	1,040
249.4	State Plan	52	1	52	40	2,080
249.6(a)(3)	Certification data for seniors	52	15,385	800,000	.25	200,000
249.10(b)	Review of vendor applications	52	70	3622	1	3622
249.10(e)	Monitoring/review of outlets	52	7.0	362	1.5	543
249.10(f)	Coupon/CSA management system	52	1	52	5	260
249.10(h)	Coupon reconciliation	52	1	52	3	156
249.11	Financial management system	52	1	52	10	520
249.12	Prior Approval for costs per 2 CFR 200.	5	1	5	160	800
249.17(b)(2)	State agency corrective action plans	7	1	7	10	70
249.18(b)	Audit responses	1	1	1	15	15
249.23(b)	Financial/recipient reports	52	1	52	40	2,080
249.23(b)	Annual Financial and Program Data Report (FNS 683A).	52	1	52	2	104
Subtotal	(Reporting Requirements)	1,092	737.022	804,829	0.26252	211,290
Affected Public: INDIVIDUALS/HOUSEHOLDS (Applicants for Program Benefits)						
Reporting:						
249.6	Certification data for seniors	800,000	1	800,000	0.01	8,000
Subtotal	(Reporting Requirements)	800,000		800,000		8,000
Affected Public: Farms (Farmers/Markets/Roadside stands/CSA's)						
Reporting:						
249.10(b)	Farmer agreements	3,622	1	3,622	0.08	290
Subtotal	(Reporting Requirements)	3,622		3,622		290
Subtotal Reporting		804,714	2	1,608,451	0.14	219,579
Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)						
Recordkeeping:						
249.9	Nutrition education	52	15,385	800,000	0.25	200,000
249.10(b)	Authorized outlet agreements	52	1	52	2	104
249.10(e)	Summary of authorized outlet monitoring.	52	1	52	2	104
249.11	Record of financial expenditures	52	1	52	2	104
249.16(a)	Fair hearings	52	1	52	1	52
249.23(a)	Record of program operations	52	1	52	40	2,080
Subtotal	(Recordkeeping Requirements)	52	15,390	800,260	0.25	202,444
Total Burden	(Reporting & Recordkeeping)	804,714	3	2,408,711	0.18	422,023

Dated: February 22, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–04443 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Conejos Peak Ranger District, Rio Grande National Forest; Colorado; CP District-wide Salvage Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Conejos Peak Ranger District, Rio Grande National Forest, proposes to salvage timber stands killed or infested by spruce beetles; reduce fuel loading adjacent to private lands; and regenerate forested acres, as needed, to move toward the long-term desired conditions described in the Forest Plan.

DATES: Comments concerning the scope of the analysis must be received by March 31, 2016.

ADDRESSES: Written comments concerning this notice should be addressed to Andrea Jones, District Ranger; Conejos Peak Ranger District; 15571 CR T.5; La Jara, CO; 81140. Comments may also be sent via email to *comments-rocky-mountain-rio-grande-conejos-peak@fs.fed.us,* or via facsimile to 719–274–6301, with subject 'CP District-wide Salvage Project.'

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Conejos Peak Ranger District office, address listed above. Visitors are encouraged to call ahead to 719–274–8971 to facilitate document access.

FOR FURTHER INFORMATION CONTACT: Michael Tooley, Interdisciplinary Team Leader, telephone: (719) 274–8971 or visit the Forest Web site: *http://www.fs.usda.gov/projects/riogrande/landmanagement/projects.*

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:

Estimated Dates

The draft environmental impact statement is expected September 2017 and the final environmental impact statement is expected December 2017.

Purpose and Need for Action

Extensive spruce beetle mortality has occurred across the Conejos Peak Ranger District since 2002, affecting over 67,000 acres to date. As a result, existing conditions within certain Management Area Prescriptions (MAPs) have departed from desired conditions described in the Revised Land and Resource Management Plan (Forest Plan). Management emphasis is on wood production within some MAPs, and there is express intent to evaluate insect and disease outbreaks against the potential for loss of commercial forest resources, with an emphasis on protecting the commercial resources. Within other MAPs, vegetation composition and structure are managed to meet specific objectives for the area (*e.g.* recreation), and vegetation management treatments are implemented to accomplish those objectives or contribute to user safety. Within yet other MAPs, the plant communities may be managed in a range of successional stages to achieve biological diversity, and vegetation management treatments are allowed with resource constraints.

These desired conditions for the MAPs tie to overarching Forestwide Desired Conditions and Objectives. One overarching Desired Condition is to supply wood products while providing for the biological diversity of forested areas. An associated Objective provides an emphasis on long-term sustainable production of resources for economies, communities, and people. Another overarching Desired Condition is that fuel profiles be consistent with land uses and estimates of historic fire regimes. An associated Objective provides for using appropriate vegetative-management methods to modify unacceptable fuel profiles, contributing to the protection of human life, property, and resources needed to support long-term industries, with firefighter safety being paramount.

This disparity between existing and desired conditions creates a need to utilize available dead and dying trees in a timely manner to meet multiple-use mandates and provide for the protection of firefighters, users, communities, and private resources. The purpose of this project is to provide an adaptive decision framework for responding to spruce beetle mortality with salvage and hazardous fuel treatment projects in a timely and cost-effective manner, while providing for site-specific protection of biological diversity and other resource management objectives.

Proposed Action

The Conejos Peak Ranger District of the Rio Grande National Forest proposes to salvage dead and dying spruce from suitable areas across the district, as well as modify forest fuels adjacent to private property and administrative sites within areas affected by spruce beetle mortality. Salvage harvest activities would occur on up to 17,000 acres across the district, on lands determined by the Forest Plan as appropriate for timber harvest. Hazardous fuel treatment activities would occur on up to 1,000 acres of treatment area, on lands determined by the same plan as appropriate for pre-commercial hand-thinning operations. Activities would begin in the summer of 2018 and continue for 10–15 years.

Activities associated with spruce salvage harvest would include: (1) Commercial logging and log hauling operations; (2) National Forest System Road maintenance and reconstruction; (3) Re-opening old non-system roads, followed by rehabilitation; (4) Temporary road construction and rehabilitation; (5) Areas identified for public and commercial firewood gathering; (6) Planting of native conifer seedlings as needed to meet future forest objectives.

Activities associated with hazardous fuel treatments within spruce mortality zones would include: (1) Pre-commercial thinning by chainsaw within 400 feet of private boundary or 200 feet of administrative sites to create defensible space; (2) Hazard tree removal by chainsaw within 400 feet of private boundary or 200 feet of administrative sites; (3) Pruning of residual trees to lift crown base height; (4) Piling and burning or removal of activity-generated fuels within timber sale or pre-commercial thinning areas.

The proposed action also includes development of an implementation checklist for later-stage analysis. The developed checklist would tier to this early-stage decision and allow focus on compliance alone in relation to (1) project decision, (2) Forest Plan, statute, and regulation, and (3) reporting and notification requirements.

Responsible Official

Conejos Peak District Ranger at 15571 County Road T.5; La Jara, CO; 81140

Nature of Decision To Be Made

An environmental impact statement (EIS) will be prepared that discloses the environmental consequences of implementing the proposed action and alternatives to the proposed action, including No Action. A separate Record

of Decision (ROD) will explain the Responsible Official's decision regarding whether or not to implement some level of timber harvest and other proposed activities on all, part, or none of the area analyzed, given the consideration of multiple-use goals and objectives.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest invites public comment and participation in this project by publication of this notice. Comments are also invited by: publication in the quarterly Schedule of Proposed Actions (SOPA); public notice regarding this project in the newspaper of record, the Valley Courier; and letters to potentially interested individuals, tribal governments, elected officials, and State and other Federal Agencies. Information will also be posted on the Rio Grande National Forest project Web site as this project progresses. Comments received during these and other scoping efforts will be considered in this EIS. No scoping meetings are planned at this time.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Preliminary Issues

The effect of proposed activities on the habitat structural needs of the local population of Canada Lynx, a Threatened species, and their primary prey, the snowshoe hare.

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 24, 2016.

Andrea Jones,

District Ranger.

[FR Doc. 2016–04487 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Casa Grande, AZ; Jamestown, ND; Lincoln, NE; Memphis, TN; and Sioux City, IA Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Farwell Commodity Grain Services, Inc. (Farwell Southwest); Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); and Sioux City Grain Inspection and Weighing Service, Inc. (Sioux City) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective:* April 1, 2015

ADDRESSES: Eric J. Jabs, Deputy Director, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments are available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the October 14, 2014, **Federal Register** (79 FR 61596), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Farwell Southwest, Jamestown, Lincoln, Midsouth, and Sioux City. Applications were due by November 13, 2014.

The current official agencies- Farwell Southwest, Jamestown, Lincoln, Midsouth, and Sioux City were the only applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments. On January 2, 2015, subsequently, Sioux City purchased Central Iowa Grain Inspection Corporation (Central Iowa) and Sioux City asked GIPSA to amend their designation to include Central Iowa's geographic area. GIPSA reviewed the proposed amendment and determined that Sioux City met all of the requirements specified in 7 CFR 800.196(f)(2) to amend their geographical area.

GIPSA evaluated the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Farwell Southwest, Jamestown, Lincoln, and Midsouth are qualified to provide official services in the geographic area specified in the **Federal Register** on October 14, 2014. This designation to provide official services in the specified areas for Jamestown, Lincoln, and Midsouth is effective April 1, 2015, to March 31, 2018. This designation action to provide official services in the specified areas for Farwell Southwest is effective April 1, 2015, to March 31, 2017.

Sioux City's designation is amended to include the additional geographic area previously designated to Central Iowa. Sioux City's designation for the following amended geographical area is effective April 1, 2015, to March 31, 2017.

Sioux City

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the

following geographic area, in the States of Iowa, Minnesota, Nebraska, and South Dakota, is assigned to this official agency.

In Iowa

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 169.

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. route 69; U.S. Route 69 south to the northern Hamilton County line; northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 to east U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines. Bounded on the East by the Eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines.

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; The western Cass and Audubon County Lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to the southern Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Minnesota

Yellow Medicine, Renville, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson, and Martin Counties.

In Nebraska

Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20), and Thurston Counties.

In South Dakota

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River.

Bounded on the East by the Big Sioux River.

Bounded on the South and West by the Missouri River.

The following grain elevators are part of this geographic area assignment. In D. R. Schaal Agency's area: Maxyield Coop, Algona, Kossuth County; Stateline Coop, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; North Central Coop, Holmes, Wright County, Iowa; Advantage F.S., Chapin, Franklin County; and Five Star Coop, Rockwell, Cerro Gordo County, Iowa.

The following grain elevators are not part of this geographic area assignment and are assigned to Omaha Grain Inspection Service, Inc.: Scoular Elevator, Elliot, Montgomery County and two Scoular elevators, Griswold, Cass County, Iowa.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Farwell Southwest	Casa Grande, AZ—(520) 421–1027	4/1/2015	3/31/2017
Jamestown	Jamestown, ND—(701) 252–1290	4/1/2015	3/31/2018
Lincoln	Lincoln, NE—(402) 435–4386	4/1/2015	3/31/2018
Midsouth	Memphis, TN—(901) 942–3216	4/1/2015	3/31/2018
Sioux City	Sioux City, IA—(712) 255–8073	4/1/2015	3/31/2017

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Under Section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in Section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–04457 Filed 2–29–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Telecommunications Program: Notice of Availability of a Programmatic Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Programmatic Environmental Assessment of USDA Rural Utilities Service's Financial Support for Deployment of the Telecommunications Programs to Rural America.

SUMMARY: The Rural Utilities Service (RUS, Agency), an agency of the United States Department of Agriculture, seeks public and federal agency comments regarding the preparation of a Programmatic Environmental Assessment (PEA) for the development of a more efficient and effective environmental review process for the RUS Telecommunications Program—an environmental review process that is commensurate with the potential environmental impacts of both wired and wireless broadband projects financed by the Agency. RUS is seeking comment from interested stakeholders regarding compliance with relevant laws and regulations, including the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA) and other environmental statutes, regulations, and Executive Orders applicable to the RUS Telecommunications Infrastructure Loan Program, Farm Bill Broadband Loan Program, Community Connect Grant Program, and Distance Learning and Telemedicine Program (collectively, the Telecommunications Program). The proposed review process supports the Agency's mission of facilitating the development of affordable and reliable

broadband infrastructure to improve the quality of life and promote economic development in rural America. The Agency programs provide a necessary source of low-cost capital for rural telecommunications companies (broadband, wireless, and fiber-to-the-home providers). RUS actions covered in the PEA include certain Agency preliminary decisions (such as obligation of funds and approval of interim financing requests) to eligible applicants for project proposals within eligible service areas. In accordance with NEPA, NHPA, ESA, and other applicable environmental statutes, regulations, and Executive Orders, RUS must evaluate the environmental impact of project proposals before providing financial assistance to eligible applicants. The PEA provides a broad environmental analysis of the Agency's preliminary decisions and includes a tiered, site-specific analysis at the project level that would be completed before Agency dispersal of funds and/or applicant construction.

DATES: Written comments on the PEA must be received on or March 31, 2016.

ADDRESSES: Please submit written comments by physical mail or electronic mail to: Mr. Richard Fristik, Senior Environmental Protection Specialist, Water and Environmental Programs/Engineering and Environmental Staff, Rural Utilities Service, 1400 Independence Ave. SW., Mail Stop 1571, Room 2240, Washington, DC 20250, *fax:* (202) 690–0649, or *email: Richard.Fristik@wdc.usda.gov.*

To obtain copies of the PEA or for further information, contact: Mr. Richard Fristik at the contact information provided in this Notice. A copy of the PEA is available for downloading through the Rural Development homepage at: *http://www.rd.usda.gov/publications/environmental-studies/assessments/programmatic-environmental-assessment.* Additional information about the Agency and its programs is available on the Internet at *http://www.rd.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: For information on the proposed PEA, please contact Mr. Richard Fristik, Senior Environmental Protection Specialist, Water and Environmental Programs/Engineering and Environmental Staff, Rural Utilities Service, 1400 Independence Ave. SW., Mail Stop 1571, Room 2240, Washington, DC 20250, *telephone:* (202) 720–5093, *fax:* (202) 690–0649, or *email: Richard.Fristik@wdc.usda.gov.* Parties wishing to be placed on the PEA's mailing list for future information and to receive copies of the PEA should also contact Mr. Fristik.

SUPPLEMENTARY INFORMATION: The RUS Telecommunications Program provides a variety of loans and grants to build and expand broadband networks in rural America. Loans to build broadband networks and deliver service to households and businesses in rural communities provide a necessary source of capital for rural telecommunications companies. Grant funding is awarded based on a number of factors relating to the benefits to be derived from the proposed broadband network project, as specified in applicable program regulations.

Eligible applicants for RUS loans and grants include for-profit and non-profit entities, tribes, municipalities, and cooperatives. The Agency particularly encourages investment in tribal and economically disadvantaged areas. Through low-cost funding for telecommunications infrastructure, rural residents can have access to services that will close the digital divide between rural and urban communities. Once funds are awarded, RUS monitors the projects to make sure they are completed in accordance with program conditions and requirements.

The application process for requesting financial assistance for the various Telecommunications programs varies slightly from a competitive grant program, individual project proposals, or multi-year ''loan design'' applications. The Agency seeks to synchronize and create environmental review efficiencies for future project-level environmental review compliance for the various programs, commensurate with the potential environmental impacts. The Agency also seeks to establish proper sequencing of certain agency preliminary decisions (*i.e.,* obligation of funds and/or approval of interim financing requests) with subsequent tiered, site-specific project environmental reviews.

The PEA is intended to expedite the funding, deployment, and expansion of broadband infrastructure in rural America. The PEA includes detailed descriptions and analyses of the direct, indirect, and cumulative impacts associated with broadband infrastructure technologies and construction methods, such as impacts to water resources, terrestrial resources, historic and cultural resources, air and climate resources, noise, threatened and endangered species, electromagnetic radiation, and Environmental Justice issues. Use of the PEA analyses thereby saves project-level processing time, ensuring consistent and accurate environmental evaluations while avoiding unnecessary duplication and repetition in project-level planning and evaluation. Use of the PEA enables project-level compliance with NEPA, ESA, NHPA, and other requirements to focus on the remaining relevant site-specific issues, expediting planning, analysis, compliance, documentation, and ultimately project-level decisions.

The PEA is available for public review at the digital and physical addresses provided in this Notice. Questions and comments should be sent to RUS at the mailing or email addresses provided in this Notice. RUS should receive written comments on the PEA on or before March 31, 2016 to ensure that they are considered in its environmental impact determination.

Any final action by RUS related to the broadband portion of the RUS Telecommunications Program will be subject to, and contingent upon, compliance with all relevant presidential executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: February 16, 2016.

Keith B. Adams

Assistant Administrator—Telecommunications Program, Rural Utilities Service.

[FR Doc. 2016–04381 Filed 2–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

[Docket No. 151109999–6121–02]

Privacy Act of 1974, New System of Records

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of a New Privacy Act System of Records: COMMERCE/NOAA–22, NOAA Health Services Questionnaire (NHSQ) and Tuberculosis Screening Document (TSD).

SUMMARY: The Department of Commerce publishes this notice to announce the effective date of a Privacy Act System of Records entitled COMMERCE/NOAA–22, NOAA Health Services Questionnaire (NHSQ) and Tuberculosis Screening Document (TSD).

DATES: The system of records becomes effective on March 1, 2016.

ADDRESSES: For a copy of the system of records, please mail requests to: Sarah Brabson, NOAA Office of the Chief

Information Officer, Room 9856, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: CAPT P. Jane Powers, 2002 SE Marine Science Drive, Newport, OR, 97365.

SUPPLEMENTARY INFORMATION: On January 16, 2016, the Department of Commerce published a notice in the **Federal Register**, entitled ''COMMERCE/NOAA–22, NOAA Health Services Questionnaire (NHSQ) and Tuberculosis Screening Document (TSD),'' requesting comments to the new system of records (81 FR 2841). The January 16, 2016 notice stated that the new system of records will become effective on the date of publication of a subsequent notice unless comments are received. No comments were received in response to the request for comments. Accordingly, by this notice, the Department of Commerce is adopting the proposed changes to the system as final without changes effective March 1, 2016.

Dated: February 24, 2016.

Michael J. Toland,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2016–04483 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–72–2015]

Foreign-Trade Zone (FTZ) 57—Charlotte, North Carolina, Authorization of Production Activity, DNP Imagingcomm America Corporation, Subzone 57C (Dye Sublimation Transfer Ribbon (STR) and STR Photo Printer Packages), Concord, North Carolina

On October 27, 2015, the Charlotte Regional Partnership, Inc., grantee of FTZ 57, submitted a notification of proposed production activity to the FTZ Board on behalf of DNP Imagingcomm America Corporation (DNP), operator of Subzone 57C, located in Concord, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 69637, November 10, 2015). The FTZ Board has determined that no further review of the proposed activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that DNP admit any foreign component or material subject to a trade-related measure/proceeding to Subzone 57C in domestic (duty-paid) status (19 CFR Sec. 146.43). Activity beyond this scope of authority would require further authorization from the FTZ Board.

Dated: February 24, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–04515 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2016

The following Sunset Reviews are scheduled for initiation in April 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department contact
Antidumping Duty Proceedings	
Aluminum Extrusions from China (A–570–967) (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Certain in-Shell Raw Pistachios from Iran[1] (A–507–502) (2nd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Countervailing Duty Proceedings	
Aluminum Extrusions from China (C–570–968) (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.

[1] *See Iran Transactions and Sanctions Regulations,* 81 FR 3330 (January 21, 2016).

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in April 2016.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 24, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–04517 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–2A004]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an amended Export Trade Certificate of Review to the DFA of California on February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (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. Sections 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 (2016).

OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CPEC's Export Trade Certificate of Review has been amended to:

1. Add as new Members with respect to the covered products listed below:

a. Walnuts: Chico Nut Company; Omega Walnut, Inc.; O-G Nut Company; California Walnut Company, Inc.; and Morada Nut Company, LP.

2. Change the name of existing Member Linden Nut Company to Pearl Crop, Inc.

DFA's complete Membership covered by the amended Export Trade Certificate of Review is listed below:

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. Carriere Family Farms, Inc., Glenn, CA
6. California Almond Packers and Exporters (CAPEX), Corning CA
7. California Walnut Company, Inc., Los Molinos, CA
8. Chico Nut Company, Chico, CA
9. Continente Nut LLC, Oakley, CA
10. C. R. Crain & Sons, Inc., Los Molinos, CA
11. Crain Walnut Shelling, Inc., Los Molinos, CA
12. Crisp California Walnuts, Stratford, CA
13. Diamond Foods, Inc., Stockton, CA
14. Empire Nut Company, Colusa, CA
15. Fig Garden Packing, Inc., Fresno, CA
16. Gold River Orchards, Inc., Escalon, CA
17. Grower Direct Nut Company, Hughson, CA
18. GSF Nut Company, Orosi, CA
19. Guerra Nut Shelling Company, Hollister, CA
20. Hill View Packing Company Inc., Gustine, CA
21. Mariani Nut Company, Winters, CA
22. Mariani Packing Company, Inc., Vacaville, CA
23. Mid Valley Nut Company Inc., Hughson, CA
24. Morada Nut Company, LP, Stockton, CA
25. National Raisin Company, Fowler, CA
26. O-G Nut Company, Stockton, CA
27. Omega Walnut, Inc., Orland, CA
28. Pearl Crop, Inc., Stockton, CA
29. Poindexter Nut Company, Selma, CA
30. Prima N oce Packing, Linden, CA
31. RPC Packing Inc., Porterville, CA
32. Sacramento Packing, Inc., Yuba City, CA
33. Sacramento Valley Walnut Growers, Inc., Yuba City, CA
34. San Joaquin Figs, Inc., Fresno, CA
35. Shoei Foods USA, Inc., Olivehurst, CA
36. Stapleton-Spence Packing, Gridley, CA
37. Sun-Maid Growers of California, Kingsburg, CA
38. Sunsweet Growers Inc., Yuba City, CA
39. Taylor Brothers Farms, Inc., Yuba City, CA
40. T.M. Duche Nut Company, Inc., Orland, CA
41. Wilbur Packing Company, Inc., Live Oak, CA
42. Valley Fig Growers, Fresno, CA

Dated: February 24, 2016.

Joseph E. Flynn,

Director, Office of Trade and Economic Analysis.

[FR Doc. 2016–04442 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: Effective Date: March 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–351–602	731–TA–308	Brazil	Carbon Steel Butt-Weld Pipe Fittings (4th Review).	Matthew Renkey (202) 482–2312.
A–351–838	731–TA–1063	Brazil	Frozen Warmwater Shrimp (2nd Review).	David Goldberger (202) 482–4136.
A–533–840	731–TA–1066	India	Frozen Warmwater Shrimp (2nd Review).	David Goldberger (202) 482–4136.
A–588–602	731–TA–309	Japan	Carbon Steel Butt-Weld Pipe Fittings (4th Review).	Matthew Renkey (202) 482–2312.
A–570–814	731–TA–520	PRC	Carbon Steel Butt-Weld Pipe Fittings (4th Review).	Matthew Renkey (202) 482–2312.
A–570–893	731–TA–1064	PRC	Frozen Warmwater Shrimp (2nd Review).	David Goldberger (202) 482–4136.
A–583–605	731–TA–310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings (4th Review).	Matthew Renkey (202) 482–2312.
A–549–807	731–TA–521	Thailand	Carbon Steel Butt-Weld Pipe Fittings (4th Review).	Matthew Renkey (202) 482–2312.
A–549–822	731–TA–1067	Thailand	Frozen Warmwater Shrimp (2nd Review).	David Goldberger (202) 482–4136.
A–552–802	731–TA–1068	Vietnam	Frozen Warmwater Shrimp (2nd Review).	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 25, 2016.

James P. Maeder,

Senior Director, Office I for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–04464 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

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 an open meeting via teleconference on Wednesday, March 16, 2016. The Council was established in April 2004 to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry. The purpose of the meeting is for Council members to review and deliberate on a recommendation by the Workforce Development Subcommittee focused on improving the perception of the manufacturing sector. The final agenda will be posted on the Department of Commerce Web site for the Council at *http://www.trade.gov/manufacturingcouncil,* at least one week in advance of the meeting.

DATES: Wednesday, March 16, 12:00 p.m.–1:00 p.m. Requests from members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or for submission of written comments for dissemination prior to the meeting, must be received by 5 p.m. EST on March 11, 2016.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. 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; email: *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, U.S. 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 accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for 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 joining the call. 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, 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 submit a written copy of their prepared remarks by 5:00 p.m. on March 11, 2016, for inclusion in the meeting records and for circulation to the members of the U.S. Manufacturing Council.

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. EST on March 11, 2016, to ensure transmission to the Council prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: February 24, 2016.

Archana Sahgal,

Executive Secretary, U.S. Manufacturing Council.

[FR Doc. 2016–04461 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

[6] *See* 19 CFR 351.218(d)(1)(iii).

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after March 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of March 2016,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceedings:	
CANADA: Iron Construction Castings A–122–503	3/1/15–2/29/16
FRANCE: Brass Sheet & Strip A–427–602	3/1/15–2/29/16
GERMANY: Brass Sheet & Strip A–428–602	3/1/15–2/29/16
INDIA: Sulfanilic Acid A–533–806	3/1/15–2/29/16
ITALY: Brass Sheet & Strip A–475–601	3/1/15–2/29/16
RUSSIA: Silicon Metal A–821–817	3/1/15–2/29/16
SPAIN: Stainless Steel Bar A–469–805	3/1/15–2/29/16
TAIWAN: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube A–583–803	3/1/15–2/29/16
THAILAND: Circular Welded Carbon Steel Pipes and Tubes A–549–502	3/1/15–2/29/16
THE PEOPLE'S REPUBLIC OF CHINA:	
Chloropicrin A–570–002	3/1/15–2/29/16
Circular Welded Austenitic Stainless Pressure Pipe A–570–930	3/1/15–2/29/16
Glycine A–570–836	3/1/15–2/29/16
Sodium Hexametaphosphate A–570–908	3/1/15–2/29/16
Tissue Paper Products A–570–894	3/1/15–2/29/16
Countervailing Duty Proceedings:	
INDIA: Sulfanilic Acid C–533–807	1/1/15–12/31/15
IRAN: In-Shell Pistachio Nuts C–507–501	1/1/15–12/31/15
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Austenitic Stainless Pressure Pipe C–570–931	1/1/15–12/31/15
TURKEY: Circular Welded Carbon Steel Pipes and Tubes C–489–502	1/1/15–12/31/15
Suspension Agreements:	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
MEXICO: Fresh Tomatoes A–201–820	3/1/15–2/29/16

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov.*[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2016. If the Department does not receive, by the last day of March 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 22, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–04518 Filed 2–29–16; 8:45 am]

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[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–489–824)]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Department) preliminarily determines that heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau or Rebecca Trainor, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4952 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on August 10, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is HWR pipes and tubes from Turkey. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice. No party filed comments on the scope of this investigation.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. There are two mandatory respondents participating in this investigation, MMZ Boru Profil Uretim Sanayi Ve Tic. A.S. (MMZ) and Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir). Export price for these companies is calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we preliminarily found a *de minimis* margin for Ozdemir. Therefore, the only rate that is not *de minimis* (or based entirely on facts otherwise available) is the rate calculated for MMZ. Consequently, the rate calculated for MMZ is also assigned as the all-others rate.

Preliminary Determination [3]

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/Manufacturer	Weighted-average dumping margin (percent)
MMZ Boru Profil Uretim Sanayi Ve Tic. A.S	14.48
Ozdemir Boru Profil San. Ve Tic. Ltd. Sti	0.00
All Others	14.48

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Turkey, as described in Appendix I of this notice, for all companies other than Ozdemir, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are not directing CBP to suspend liquidation of Ozdemir's entries because Ozdemir's preliminary estimated weighted-average dumping margin is *de minimis*.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, adjusted where appropriate for export subsidies found in the preliminary determination of the companion countervailing duty investigation. Consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, less the amount of the countervailing duty determined to constitute an export subsidy.[4]

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 49202 (August 17, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this investigation is now February 22, 2016.

[4] *See, e.g., Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362 (October 13, 2015) and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical*

Continued

Therefore, for cash deposit purposes, we are subtracting from the applicable cash deposit rate the portion of the countervailing duty rates attributable to the export subsidies found in the preliminary countervailing duty determination. Accordingly, the export subsidy offsets are as follows: 0.46 percent for Ozdemir and 0.24 percent for all others.[5] After this adjustment, the resulting cash deposit rates will be 0.00 percent for Ozdemir and 14.24 percent for all others. There were no export subsidies found for MMZ in the countervailing duty investigation.

Further, pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits equal to the above-noted rates, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rates we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all-others rate, adjusted as appropriate for export subsidies. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents MMZ and Ozdemir requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.,* to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[7] In addition, the petitioners[8] also requested that, in the event of a negative preliminary determination, the Department postpone its final determination to 135 days after the date of publication of the preliminary determination.[9]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; (3) the requesting exporters have each requested extension of provisional measures to a period not more than six months; and (4) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[10]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413 (March 26, 2012).

[5] *See* Memorandum to the File from Rebecca Trainor, entitled, ''Preliminary Determination Calculation of the All Others Rate,'' dated February 22, 2016.

[6] *See* 19 CFR 351.309.

[7] *See* letter from MMZ entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETIM SANAYi VE TiC A.S. (MMZ) Request for Postponement of Final Determination,'' dated January 21, 2016; and letter from Ozdemir entitled, ''Antidumping: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Ozdemir Request to Postpone Final Determination,'' dated January 26, 2016.

[8] The petitioners in this proceeding are Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; EXLTUBE; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc.

[9] *See* letter from the petitioners entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipe and Tubes from Turkey: Request to Extend Final Determination,'' dated February 4, 2016.

[10] *See* 19 CFR 351.210(b)(2) and (e).

Dated: February 22, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of the Methodology
   a. Determination of the Comparison Method
   b. Results of the Differential Pricing Analysis
7. Date of Sale
8. Product Comparisons
9. Export Price
10. Normal Value
   a. Home Market Viability
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   c. Cost of Production (COP) Analysis
   1. Calculation of COP
   2. Test of Comparison Market Sales Prices
   3. Results of the COP Test
   d. Calculation of NV Based on Comparison Market Prices
11. Currency Conversion

[FR Doc. 2016–04512 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Department) preliminarily determines that heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on August 10, 2015.[1] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[2] All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this investigation is now February 22, 2016. For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[3]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is HWR pipes and tubes from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice. No party filed comments on the scope of this investigation.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. There are two mandatory respondents participating in this investigation: Dong-A Steel Company (DOSCO) and HiSteel Co., Ltd (HiSteel). Export price and, where appropriate, constructed export price for these companies are calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

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[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 49202 (August 17, 2015).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea'' (Preliminary Decision Memorandum), dated concurrently with this notice.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we based our calculation of the all-others rate on the weighted-average of the margins calculated for DOSCO and HiSteel using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents.[4] For further discussion of this calculation, *see* the memorandum entitled ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Calculation of the Preliminary Margin for All Other Companies,'' dated concurrently with this notice.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margin (percent)
Dong-A Steel Company	2.53
HiSteel Co., Ltd	3.81
All Others	3.31

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Korea, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits [5] equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rates we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all others rate. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents DOSCO and HiSteel requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination by 60 days (*i.e.,* to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[7] In addition, the petitioners [8] also requested that, in the event of a negative preliminary determination, the Department postpone its final determination to 135 days after the date of publication of the preliminary determination.[9]

[4] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362, 61363 (October 13, 2015).

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[6] *See* 19 CFR 351.309.

[7] *See* letter from DOSCO entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Request for Extension of Time for the Department's Final Determination,'' dated January 13, 2016; and letter from HiSteel entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Request for the Department's Final Determination Extension of Deadline,'' dated February 8, 2016.

[8] The petitioners in this proceeding are Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; EXLTUBE; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc.

[9] *See* letter from the petitioners entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipe and Tubes from Korea: Request to Postpone Final Determination,'' dated February 4, 2016.

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[10]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 22, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of Methodology
   a. Determination of the Comparison Method
   b. Results of the Differential Pricing Analysis
7. Date of Sale
8. Product Comparisons
9. Export Price/Constructed Export Price
10. Normal Value
   a. Home Market Viability
   b. Affiliated-Party Transactions and Arm's Length Test
   c. Level of Trade
   d. Cost of Production Analysis
   1. Calculation of COP
   2. Test of Comparison Market Sales Prices
   3. Results of the COP Test
   e. Calculation of NV Based on Comparison Market Prices
11. Currency Conversion
12. Conclusion

[FR Doc. 2016–04520 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–847]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Department) preliminarily determines that heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on August 10, 2015.[1] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this investigation is now February 22, 2016.[2] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized

[10] *See* 19 CFR 351.210(b)(2) and (e).

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 49202 (August 17, 2015) (*Initiation Notice*).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico'' (Preliminary Decision Memorandum), dated concurrently with this notice.

Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are HWR pipes and tubes from Mexico. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Scope Comments

As noted in the *Initiation Notice,* we set aside a period of time for parties to raise issues regarding product coverage.[4] On October 13, 2015, we received comments from Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), a producer/exporter of HWR in Mexico, in the context of its response to the Department's questionnaire.[5] In these comments, Prolamsa requested that the Department find that two types of HWR products are outside the scope of this investigation (*i.e.,* HWR cut to short lengths and custom-designed HWR sold as parts). On December 1, 2015, we received a similar request from Maquilacero S.A. de C.V. (Maquilacero), also a producer/exporter of HWR in Mexico.[6] On December 2, 2014, the petitioners [7] objected to Maquilacero's request, noting that the products in question are within the definition of the scope.[8]

We considered the requests noted above, as well as the petitioners' responsive comments. Absent an overarching reason to modify the scope in the petition, the Department accepts the scope as it is currently written.[9] Consequently, we made no change to the scope with respect to cut-to-length products, as well as HWR sold as parts because: (1) These products are clearly within the scope; and (2) the petitioners intended that these products be covered. For further discussion, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. There are two mandatory respondents participating in this investigation, Maquilacero and Prolamsa. Export price and, where appropriate, constructed export price, for these companies are calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we based our calculation of the all-others rate on the weighted-average of the margins calculated for Maquilacero and Prolamsa using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents. For further discussion of this calculation, *see* the memorandum entitled ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Calculation of the Preliminary Margin for All Other Companies,'' dated concurrently with this notice.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margin (percent)
Maquilacero S.A. De C.V	3.99
Productos Laminados de Monterrey S.A. de C.V	16.31
All Others	13.65

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Mexico, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits [10] equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rates we determined in this

[4] *See Initiation Notice,* 80 FR at 49203; *see also Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See* Prolamsa's October 13, 2015, submission, at A–14.

[6] *See* Maquilacero's December 1, 2015, submission, at 4–5.

[7] The petitioners in this proceeding are Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; EXLTUBE; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc.

[8] *See* the petitioners' December 2, 2015, submission, at 1–2.

[9] *Id.; see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 51788, 51789 (September 5, 2008), unchanged in *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation,* 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision memorandum, at Comment 12; and *Mitsubishi Heavy Industries, Ltd.* v. *United States,* 986 F. Supp. 1428, 1433–34 (CIT 1997).

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all others rate. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents Maquilacero and Prolamsa requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.,* to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[12] In addition, the petitioners also requested that, in the event of a negative preliminary determination, the Department postpone its final determination to 135 days after the date of publication of the preliminary determination.[13]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[14]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 22, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See* letter from Prolamsa entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Request to Postpone the Final Determination,'' dated February 5, 2016; and letter from Maquilacero entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; Maquilacero S.A. de C.V.'s Request for Postponement of Final Determination,'' dated February 11, 2016.

[13] *See* letter from the petitioners entitled, ''Heavy Walled Rectangular Welded Carbon Steel Pipe and Tubes from Mexico: Request to Extend Final Determination,'' dated February 4, 2016.

[14] *See* 19 CFR 351.210(b)(2) and (e).

and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of Methodology
   a. Determination of the Comparison Method
   b. Results of the Differential Pricing Analysis
7. Date of Sale
8. Product Comparisons
9. Export Price/Constructed Export Price
10. Normal Value
   a. Home Market Viability
   b. Affiliated Party Transactions and Arm's-Length Test
   c. Level of Trade
   d. Cost of Production (COP) Analysis
   1. Calculation of COP
   2. Test of Comparison Market Sales Prices
   3. Results of the COP Test
   e. Calculation of NV Based on Comparison Market Prices
11. Currency Conversion
12. Conclusion

[FR Doc. 2016–04511 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Service Life Prediction Methodologies and Metrologies for Commercial Polymers Consortium

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) is establishing the Service Life Prediction Methodologies and Metrologies for Commercial Polymers Consortium (Consortium) and invites organizations to join the Consortium. The Consortium will develop the science necessary to support the modification of standards for the testing and the certification of commercial polymeric materials. This notice is the initial step for the Consortium in collaborating with organizations to develop reliability-based service life prediction methodology for commercial polymers. The prediction methods will be used to update testing standards for polymeric materials in order to better assess the level of protection for the consumer while reducing the time for evaluation and certification of polymeric materials. Participation in the Consortium is open to all eligible organizations as described below.

DATES: NIST will begin accepting responses from interested parties on March 1, 2016. The collaborative activities under this Consortium will begin on March 20, 2016.

ADDRESSES: Information in response to this notice and request for additional information can be directed to NIST's Consortium Manager, Christopher C. White, NIST's Engineering Laboratory, Polymeric Materials Group. Information may be sent by mail to 100 Bureau Drive, Mail Stop 8615, Gaithersburg, Maryland 20899, or by electronic mail to *christopher.white@nist.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about partnership opportunities or about terms and conditions of NIST's Cooperative Research and Development Agreement (CRADA), please contact NIST's CRADA and License Officer, Honeyeh Zube, Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, or by electronic mail to *honeyeh.zube@nist.gov.*

SUPPLEMENTARY INFORMATION: The objective of this Consortium is to develop the science necessary to support the modification of UL Standards for testing and certification of polymeric materials (UL Standard Subject Numbers 746A–F), which are under the direction of the Standard Technical Panel (STP). More information about UL Standards is available at *http://ulstandards.ul.com.* The activities of NIST's Consortium will align the latest knowledge on polymer science with the UL Standards that relate to the retention of performance properties after long term thermal aging (UL 746B, Safety of Polymeric Materials—Long Term Property Evaluations) and after exposure to ultraviolet radiation and moisture (UL 746C, Standard for Polymeric Materials—Use in Electrical Equipment Evaluations). By working with industry, and leveraging NIST's existing reliability-based service life prediction methodology for commercial polymers, the UL Standards for polymeric materials can provide better assessment of the level of protection for the consumer and potentially reduce the time for evaluation and certification. A better understanding of the effect of thermal, radiation, and humidity exposures on polymeric material will allow a more expedited process for standards updating, ensure that the standards remain current with the advancement of polymers, and drive innovation in applications where such environmental conditions exist. The STP for UL 746 will have the ultimate responsibility to modify UL Standards and introduce new test methods in the polymeric materials standards.

Long-term Thermal Aging: Thermal Indices (TIs) and/or Relative Thermal Indices (RTIs): The UL certification program for polymeric materials has been very successful at increasing the safety of plastic products. The UL certification program relating to thermal performance of polymeric materials is based on Dr. Thomas Dakin's proposal in 1948 to treat electrical insulation deterioration as a chemical rate phenomenon. This resulted in the Arrhenius analysis of data from the degradation of polymeric materials exposed to multiple temperatures and extrapolation to obtain an estimated use temperature. This method, while increasing the safety, has also required significant investment of time and other resources. For example, a simple formulation change to a polymeric compound may require up to eighteen months for recertification. This Consortium's first goal is to identify and provide the latest available scientific knowledge for methods that reduce the time required to obtain a temperature rating while maintaining the highest level of safety.

Exposure to Ultraviolet Radiation and Moisture: UV and Humidity Ratings (f1 and f2): This Consortium's second goal is to evaluate polymeric materials when simultaneously exposed to UV radiation and humidity. Such evaluation techniques attempt to simulate the outdoor conditions where these polymeric materials could be used. Currently, exposure of polymeric materials to UV and humidity are evaluated separately by introducing specimens in a xenon chamber and in a water bath to determine the permanence of certain properties (typically mechanical and flammability) after these exposures. The specimens are not exposed in a manner that simulates simultaneous exposure to thermal, radiation and humidity. This Consortium will bring together expertise and experimental capabilities to evaluate the practicality of existing methods in determining the (f1) and (f2) ratings. NIST intends to work with participants of the Consortium in several stages: The first stage will focus on thermal-only exposures to support TI and/or RTI testing and round robin evaluation of accelerated techniques; the second stage will focus on UV and humidity exposures to support (f1) and (f2) ratings; and the third stage will

include simultaneous exposure to UV light, temperature, and humidity. To accomplish these stages, NIST and participants intend to perform the following tasks:

1. Identify critical polymeric materials and important chemistries;
2. Establish the characterization methods for performance tracking;
3. Generate thermal decomposition data and weathering data indoor and outdoor;
4. Develop thermal decomposition models; and
5. Develop weathering models based on the indoor data and validate the model against the outdoor data.

Leveraging previous accelerated weathering efforts at NIST allows for the use of standardized characterization methods for photo-oxidation and mechanical performance. Performance characterization methods that will be used in this Consortium will be selected based on consultation with the participants. The most time consuming aspect of this project is generating the validation data from outdoor exposures. Outdoor exposure of polymeric materials will occur as soon the materials are identified. NIST's Consortium Manager will work with the Consortium Members to select outdoor locations. A larger number of exposure sites increases the validation of the model predictions for the entire United States. The indoor exposure testing using NIST's existing weathering devices (*i.e.,* SPHERE) will continue throughout the life of the project.

Participation Process: NIST is soliciting responses from all sources, including State or local governments, industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations), public and private foundations, and nonprofit organizations (including universities). Interested parties should provide the following information to the NIST Consortium Manager:

(1) What is your opinion about the objectives of the Consortium and the proposed involvement of your organization in this Consortium?

(2) Will your organization be capable of contributing the polymeric materials necessary to accomplish the research anticipated by this Consortium?

(3) What is your opinion on the needs and interest of your organization in participating in this Consortium?

(4) What technical expertise is your organization capable of providing to the research anticipated by this Consortium (*i.e.,* what are the technical capabilities of the individuals on your organization's project team)?

A responding organization should not include any confidential information in its response to this request for information. NIST will not treat any such information as proprietary. Based on the response received, NIST will decide whether the responding organization is eligible to participate in this Consortium. The eligibility to participate will be based on the following criteria: (1) The rationality and feasibility of the responding organization's proposed involvement in this Consortium; (2) the extent to which the responding organization is capable of contributing its polymer materials and other contributions needed from each member of this Consortium; and (3) the extent to which the responding organization has personnel that has adequate expertise and technical merit to contribute expertise to this Consortium.

NIST has the sole discretion to determine the eligibility of a responding organization to participate in this Consortium. Any responding organization that is debarred from working with the U.S. Government will not be eligible to participate in this Consortium. NIST may contact the responding organization for additional information to determine eligibility. NIST's Technology Partnerships Office will provide eligible parties with the Cooperative Research and Development Agreement (CRADA) for this Consortium. Each eligible party will be required to execute the Consortium's CRADA prior to participation. Each CRADA will have terms that are identical to the terms of other participants' CRADAs for this Consortium. NIST will require each participant to contribute $15,000 in annual membership fees for funding the activities under this Consortium. NIST intends to establish the Consortium for a five (5) year period. The terms of the CRADA shall be consistent with the requirements of Title 15, United States Code, Chapter 63, Section 3710a (Cooperative Research and Development Agreements). Although NIST does not guarantee participation in this Consortium or future collaboration, any member of the public is welcome to contact the Technology Partnerships Office with information about NIST-led Consortia or other potential collaborations.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2016–04385 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE458

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Central Gulf of Alaska Rockfish Program

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes the standard ex-vessel prices and fee percentage for cost recovery under the Central Gulf of Alaska Rockfish Program. This action is intended to provide participants in a rockfish cooperative with the standard prices and fee percentage for the 2015 fishing year, which was authorized from May 1 through November 15. The fee percentage is 3.0 percent. The fee liability payments were due from each rockfish cooperative by February 15, 2016.

DATES: Effective March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The rockfish fisheries are conducted in Federal waters near Kodiak, AK, by trawl and longline vessels. Regulations implementing the Central Gulf of Alaska (GOA) Rockfish Program (Rockfish Program) are set forth at 50 CFR part 679. Exclusive harvesting privileges are allocated as quota share under the Rockfish Program for rockfish primary and secondary species. The rockfish primary species are northern rockfish, Pacific ocean perch, and dusky rockfish. In 2012, dusky rockfish replaced the pelagic shelf rockfish species group in the GOA Groundfish Harvest Specifications (77 FR 15194, March 14, 2012). The rockfish secondary species include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. Rockfish cooperatives began fishing under the Rockfish Program on May 1, 2012.

The Rockfish Program is a limited access privilege program established under the provisions of section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Sections 303A and 304(d) of the MSA require NMFS to collect fees to recover the actual costs directly related to the management, data collection and

analysis, and enforcement of any limited access privilege program. Therefore, NMFS is required to collect fees for the Rockfish Program under sections 303A and 304(d)(2) of the MSA. Section 304(d)(2) of the MSA also limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the fish harvested under the Rockfish Program.

Standard Prices

NMFS calculates cost recovery fees based on standard ex-vessel value price, rather than actual price data provided by each rockfish cooperative quota (CQ) holder. Use of a standard ex-vessel price is allowed under sections 303A and 304(d)(2) of the MSA. NMFS generates a standard ex-vessel price for each rockfish primary and secondary species on a monthly basis to determine the average price paid per pound for all shoreside processors receiving rockfish primary and secondary species CQ.

Regulations at § 679.85(b)(2) require the Regional Administrator to publish rockfish standard ex-vessel values during the first quarter of each calendar year. The standard prices are described in U.S. dollars per pound for rockfish primary and secondary species CQ landings made during the previous year.

Fee Percentage

NMFS assesses a fee on the standard ex-vessel value of rockfish primary species and rockfish secondary species CQ harvested by rockfish cooperatives in the Central GOA and waters adjacent to the Central GOA when rockfish primary species caught by a cooperative are deducted from the Federal total allowable catch. The rockfish entry level longline fishery and opt-out vessels are not subject to cost recovery fees because those participants do not receive rockfish CQ. Specific details on the Rockfish Program's cost recovery provision may be found in the implementing regulations set forth at § 679.85.

NMFS informs—by letter—each rockfish cooperative of the fee percentage applied to the previous year's landings and the total amount due. Fees are due on February 15 of each year. Failure to pay on time will result in the permit holder's quota share becoming non-transferable and the person will be ineligible to receive any additional quota share by transfer. In addition, cooperative members will not receive any rockfish CQ the following year until full payment of the fee liability is received by NMFS.

NMFS calculates and publishes in the **Federal Register** the fee percentage in the first quarter of each year according to the factors and methods described in Federal regulations at § 679.85(c)(2). NMFS determines the fee percentage that applies to landings made in the previous year by dividing the total Rockfish Program management, data collection and analysis, and enforcement costs (management costs) during the previous year by the total standard ex-vessel value of the rockfish primary species and rockfish secondary species for all rockfish CQ landings made during the previous year (fishery value). NMFS captures the actual management costs through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. Fee collections in any given year may be less than, or greater than, the actual management costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of the calendar year based on the management costs and the fishery value of the previous calendar year.

Using the fee percentage formula described above, the estimated percentage of management costs to value for the 2015 calendar year is 3.3 percent of the standard ex-vessel value; except the rockfish fee percentage amount must not exceed 3.0 percent pursuant to MSA section 304(d)(2)(B). Therefore, the 2015 fee liability percentage is set at 3.0 percent. The fee liability percentage for 2015 remains the same as the 2014 fee liability percentage (80 FR 6053, February 4, 2015). Management costs were similar between 2014 and 2015, with slightly increased costs attributable to software upgrades needed to maintain the catch accounting system.

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2015 ROCKFISH PROGRAM SEASON IN KODIAK, ALASKA

Species	Period ending	Standard ex-vessel price per pound ($)
Dusky rockfish *	May 31	0.16
	June 30	0.18
	July 31	0.17
	August 31	0.17
	September 30	0.17
	October 31	0.17
	November 30	0.17
Northern rockfish	May 31	0.15
	June 30	0.17
	July 31	0.16
	August 31	0.18
	September 30	0.16
	October 31	0.17
	November 30	0.26
Pacific cod	May 31	0.28
	June 30	0.27
	July 31	0.27
	August 31	0.31
	September 30	0.27
	October 31	0.27
	November 30	0.30
Pacific ocean perch	May 31	0.19
	June 30	0.19
	July 31	0.18
	August 31	0.17

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2015 ROCKFISH PROGRAM SEASON IN KODIAK, ALASKA—Continued

Species	Period ending	Standard ex-vessel price per pound ($)
	September 30	0.19
	October 31	0.19
	November 30	0.19
Rougheye rockfish	May 31	0.23
	June 30	0.22
	July 31	0.18
	August 31	0.17
	September 30	0.15
	October 31	0.15
	November 30	0.17
Sablefish	May 31	2.63
	June 30	2.68
	July 31	2.76
	August 31	3.57
	September 30	2.67
	October 31	4.56
	November 30	2.96
Shortraker rockfish	May 31	0.16
	June 30	0.20
	July 31	0.15
	August 31	0.15
	September 30	0.15
	October 31	0.18
	November 30	0.17
Thornyhead rockfish	May 31	0.31
	June 30	0.35
	July 31	0.35
	August 31	0.40
	September 30	0.33
	October 31	0.59
	November 30	0.67

* The pelagic shelf rockfish (PSR) species group has been changed to ''dusky rockfish.''

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

Dated: February 25, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–04453 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE298

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, NMFS West Coast Region, has determined that an application for an exempted fishing permit (EFP) warrants further consideration and requests public comment on the application. The application requests a 2-year exemption from prohibitions under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) to test the effects and efficacy of using modified drift gillnet (DGN) gear to fish for swordfish and other highly migratory species (HMS) off the U.S. West Coast in the Pacific Leatherback Conservation Area (PLCA) when environmental conditions are favorable during the PLCA closure period.

DATES: Comments must be submitted in writing by March 31, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0063, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0063,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. EFP applications will be available under Relevant Documents through the same link.

• *Mail:* Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2015–0063'' in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562–980–4198.

SUPPLEMENTARY INFORMATION: On July 2, 2014, the Pacific Fishery Management Council (Council) solicited EFP proposals [1] to test alternative gears to large-mesh drift gillnet and/or new approaches or methods for targeting swordfish and other HMS off the U.S. West Coast. In response, the Alliance of Communities for Sustainable Fisheries (ACSF) submitted an application that, in summary, proposes to fish in the PLCA using two DGN vessels, with 60 sets per vessel and 100% monitoring, from August 15 to November 15. The PLCA, located off the coast of California and Oregon, is an area closed to DGN fishing annually from August 15 to November 15 under the HMS FMP (50 CFR 660.713(c)), and is bounded by straight lines connecting the following coordinates in the order listed: Point Sur at 36°18.5′ N. lat., to 34°27′ N. lat. 123°35′ W. long., to 34°27′ N. lat. 129° W. long., to 45° N. lat. 129° W. long., and then to the point where 45° N. lat. intersects the Oregon coast. This application contemplates that the two commercial fishing vessels would be exempt from the PLCA closure period, and applicants would have access to this area when favorable oceanographic conditions (*e.g.,* sea surface temperature, prey abundance) are present. The EFP would test whether these triggers could result in increased swordfish catch and decreased bycatch. Vessels fishing under an EFP would be subject to all other regulations implementing the HMS FMP, including measures to protect sea turtles and marine mammals. The applicants requested issuance of an EFP for two fishing seasons or two calendar years. The Council discussed the merits of the application at its March 2015 meeting and concluded that obtaining additional information was warranted.[2]

At the June 2015 Council meeting, ACSF submitted a revised application addressing the Council's concerns. Based on the revised application, the Council recommended [3] that NMFS consider issuing an EFP to ACSF as long as the EFP were restricted in accordance with the Council's supplementary conservation recommendations. These recommendations were to ensure adequate scientific design while testing the hypothesis that dynamic ocean management practices could be used to effectively reduce the risk of protected species bycatch when targeting swordfish. The Council recommendation is consistent with the policy it articulated in June 2014 to evaluate future access to the PLCA in light of full accountability and acceptable bycatch cap levels.[4] After reviewing the revised EFP application, on July 8, 2015, the Council transmitted to NMFS its written recommendation to issue an EFP based on the ACSF application. At its November 2015 meeting, the Council reaffirmed their support of a DGN EFP within the PLCA that uses favorable oceanographic conditions to trigger fishing times and locations. Similar uses of dynamic ocean management have proven effective in domestic fisheries. For example, fishermen are using sea surface temperatures and sea turtle thermal habitat preferences to minimize loggerhead sea turtle (*Caretta caretta*) interactions in the Hawaii longline fishery. On the U.S. East Coast, fishermen have reduced yellowtail flounder bycatch in the Atlantic sea scallop fishery by reporting bycatch levels in small spatial grids via vessel monitoring systems with coincident avoidance of unfavorable grids by the fleet. Since adopting this program, the fishery has remained open for its entire duration because bycatch levels have not been reached (Lewison *et al.,* 2015). There are other examples of successful fishery-trigger mechanisms in salmon gillnet fisheries in the Strait of Juan de Fuca and the Columbia River, where bycatch observations in test fisheries and species-specific dam counts, respectively, are successfully used to obtain high target species catch and low incidence of bycatch in full-fleet fisheries (Pacific Fishery Management Council, personal communication).

Academic researchers, in collaboration with NMFS scientists, have been developing EcoCast, a tool to predict favorable habitat for swordfish and bycatch species to assist fishers in targeting catch and in bycatch avoidance. This tool may be used to support the EFP objective of testing the use of environmental triggers to direct fishing to times and areas of increased swordfish catch and decreased bycatch.

The Council has indicated that if the innovations tested in this EFP are able to demonstrate higher target catch and lower bycatch than the current DGN fleet, the Council would consider subsequent EFPs that increase the number of vessels fishing within the PLCA. The Council may also recommend granting DGN vessels access to all, or portions of, the PLCA when oceanographic conditions suggest that swordfish catch rates would be higher and protected species bycatch would be lower.

Proposed Restrictions for an EFP in the PLCA

The Council suggested conditions that NMFS impose on an EFP, if issued, to ACSF. Conservation and gear modification recommendations, as well as general EFP recommendations, include:

(1) An observed serious injury or mortality of a single leatherback sea turtle would terminate the EFP.

(2) No more than two large mesh drift gillnet vessels could fish under the EFP.

(3) The EFP fishing vessels must consult with scientists from NMFS' Southwest Fisheries Science Center about current ocean climate conditions that are thought to be favorable for identification of optimal time/area locations to conduct test fishery operations. In this consultation, the scientists would use oceanographic data to predict general times and areas where target catch rates are expected to be high relative to bycatch rates, especially bycatch rates of protected species. The scientists would identify times and areas anticipated to have favorable environmental conditions, deliver this information via web interface or via mobile application, and the fishermen would determine the exact time and location of EFP fishing activity based on ocean conditions and their experience optimizing the ratio of target to non-target species. These data will be used to test and improve the oceanographic models to ensure they are accurately predicting times and areas with a high target catch to bycatch ratio.

(4) The EFP vessels must collect detailed data on catch and bycatch, gear deployment, and ocean conditions, including: Catch-per-unit-effort, sea surface temperature, water clarity, profiles of temperature with depth, species and abundance of marine mammals and turtles in the area, and other information available from sonar, echo-sounder, or other onboard electronic technology devices.

(5) 100% on-board observer coverage would be required while fishing under the EFP.

(6) The following gear modifications must be instituted relative to the rest of the DGN fishery:

—Installation of 50 percent more acoustic pingers,

[1] *http://www.pcouncil.org/wp-content/uploads/HMS_EFP_Notice_Letter_July2014.pdf.*

[2] *http://www.pcouncil.org/wp-content/uploads/2015/03/0315decisions.pdf.*

[3] *http://www.pcouncil.org/wp-content/uploads/2015/06/0615decisions.pdf.*

[4] *http://www.pcouncil.org/wp-content/uploads/0614decisions.pdf.*

—breakaways on the net allowing large mammals to break through the gear (Note: A 'breakaway' is a weakly sewn together area of the net that would allow a large animal to break the net and avoid entanglement),
—shortening soak times to only 6 hours, and
—shortening the net length to 900 fathoms.

(7) Impose an annual incidental catch limit for striped marlin.

(8) Prohibit fishing in leatherback sea turtle critical habitat (designated under the federal Endangered Species Act (ESA)).

(9) Prohibit fishing in waters north of the Washington/Oregon border, and in the first year prohibit fishing in waters north of the Oregon/California border.

(10) Fishing under the EFP would cease for the remainder of the year if the number of observed takes in the fishery for animals listed as threatened or endangered under the ESA is the lower of either double the amount of incidental take estimated in an ESA biological opinion prepared for the EFP, or 10 animals.

Additional EFP Considerations

The elements of the EFP application and the Council recommendations will be considered by NMFS; however, if NMFS issues an EFP, it may impose different and/or additional mitigation measures as it deems necessary and in accordance with other applicable laws, such as the ESA. In considering this matter, NMFS is seeking public comment on the EFP application, the Council's recommended conditions, and any other suggested mitigation measures to improve conservation elements while maintaining feasible fishery operations. In particular, NMFS is interested in additional methods and technologies that could be applied to the fishing operations in order to further reduce the likelihood of interactions with federally endangered leatherback sea turtles. NMFS is mindful of the population status of Pacific leatherback sea turtles and that test fishing in the PLCA with DGN gear would have interaction risks with the endangered Pacific leatherback sea turtle. Designing an EFP that minimizes such risks is critical, and therefore NMFS is also interested in comments on how this proposed EFP complements the draft Pacific Coast Swordfish Fishery Management and Monitoring Plan and the future of the U.S. West Coast swordfish fishery.

In accordance with NOAA Administrative Order 216–6, if NMFS pursues issuance of an EFP, then NMFS will complete the appropriate National Environmental Policy Act (NEPA) analyses. Additionally, issuance of an EFP would be developed for consistency with all applicable laws, including Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*), to ensure it would not be likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Given strong public interest in the DGN fishery and its impacts on protected species, if NMFS decides to pursue issuing an EFP to ACSF, then it will publish a 'Notice of Availability' to give the public the opportunity to comment on the draft NEPA analysis (*i.e.,* either environmental assessment or environmental impact statement) that would be prepared for the proposed action.

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

Dated: February 24, 2016.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–04368 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Revised Draft Programmatic Environmental Assessment (PEA) for U.S. Integrated Ocean Observing System (IOOS®) Projects

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Request for comments.

SUMMARY: NOAA is hereby requesting comments on the IOOS Revised Draft PEA.

DATES: *Dates and Times:* The Revised Draft PEA is available for public review and comment through March 15, 2016.

ADDRESSES: The Revised Draft PEA is available online at *www.ioos.noaa.gov/about/governance/environmental_compliance.html.* If you wish to comment on the Revised Draft PEA, please send comments via email to Regina Evans at *regina.evans@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Regina Evans, U.S. IOOS, Regions Budget & Policy Division, 1315 East West- Highway, SSMC3, 2nd Floor, Silver Spring, MD 20910; Phone 301–713–3290, ext. 110; Fax 301–713–3281; Email *regina.evans@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Integrated Coastal and Ocean Observation System (ICOOS) Act of 2009 mandated the establishment of IOOS with NOAA as lead Federal agency. In April 2015, IOOS published a Notice of Availability for review and comment on a draft PEA of NOAA's IOOS Program observing activities regularly occurring in the environment as a direct result of cooperative agreements funded by this program. Technologies proposed for deployment and observational activities under IOOS are categorized into the following groups: Sensors and instrumentation; vessels (including personal watercraft) and sampling; AUVs, gliders, and drifters; moorings, marine stations, buoys, and fixed arrays; HF radar; sound navigation and ranging (sonar); and light detection and ranging (lidar). These observing activities support the core mission of IOOS: Systematic provision of readily accessible marine environmental data and data products in an interoperable, reliable, timely, and user-specified manner to end-users/customers to serve seven critical and expanding societal needs:

1. Improve predictions of climate change and weather and their effects on coastal communities and the nation;

2. Improve the safety and efficiency of maritime operations;

3. More effectively mitigate the effects of natural hazards;

4. Improve national and homeland security;

5. Reduce public health risks;

6. More effectively protect and restore healthy coastal ecosystems; and

7. Enable the sustained use of ocean and coastal resources.

Since the close of the public comment period on the initial draft PEA, IOOS has revised the document and seeks comment on the Revised Draft PEA. The PEA was revised to include a new alternative and to designate it as the proposed action (preferred alternative). The Proposed Action included in the public review draft anticipated full buildout of the proposed observing system program. However, budget constraints have made full buildout unobtainable at this time. IOOS developed the new alternative and changed the Proposed Action to reflect consideration of actual funding levels. Although IOOS remains committed to developing full system capabilities, the timeline for reaching those goals has been extended. The revised draft PEA reflects the anticipated program actions consistent with historic and anticipated future budget authorizations.

Statutory Authority: Integrated Coastal and Ocean Observation System Act of 2009 (33 U.S.C. 3601–3610).

Zdenka S. Willis,

Director, U.S. Integrated Ocean Observing System.

[FR Doc. 2016–04484 Filed 2–29–16; 8:45 am]

BILLING CODE P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request Under the U.S-Morocco Free Trade Agreement

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for modification of the U.S.-Morocco Free Trade Agreement (USMFTA) rules of origin for 100% viscose woven fabric.

SUMMARY: On January 27, 2016, the Government of the United States received a request from the Government of Morocco, on behalf of HTL FASHION to initiate consultations with the Government of Morocco under Article 4.3.3 of the USMFTA. The Government of Morocco is requesting that the United States and Morocco (''the Parties'') consider revising the rules of origin for dresses, skirts, and blouses and tops to address availability of supply of 100% viscose woven fabric in the territories of the Parties. The President of the United States may proclaim a modification to the USMFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Morocco on a modification under Article 4.3.6 of the USMFTA to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties.

DATES: CITA hereby solicits public comments on this request, in particular with regard to whether 100% viscose woven fabric of Harmonized Tariff Schedule of the United States (HTSUS) subheading 5408.24 can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 31, 2016 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–1550.

SUPPLEMENTARY INFORMATION:

Authority

Section 203 (j)(2)(B)(i) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USMFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

Background

Article 4.3.3 of the USMFTA provides that, on the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties. In the consultations, pursuant to Article 4.3.4 of the USMFTA, each Party shall consider data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner. The USMFTA Implementation Act provides the President with the authority to proclaim as part of the HTSUS, modifications to the USMFTA rules of origin set out in Annex 4–A of the USMFTA as are necessary to implement an agreement with Morocco under article 4.3.6 of the USMFTA, subject to the consultation and layover requirements of Section 104 of the USMFTA Implementation Act. *See* Section 203(j)(2)(B)(i) of the USMFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that appropriate officials or agencies of the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On January 27, 2016, the Government of the United States received a request from the Government of Morocco dated January 14, 2016, on behalf of HTL FASHION, requesting that the United States consider whether the USMFTA rule of origin for dresses, skirts, blouses and tops classified in HTSUS chapter 62, should be modified to allow the use of 100% viscose woven fabric classified in subheading 5408.24 of the HTSUS that is not originating under the USMFTA.

CITA is soliciting public comments regarding this request, particularly with respect to whether 100% viscose woven fabric described above can be supplied by the U.S. domestic industry in commercial quantities in a timely manner. Comments must be received no later than March 31, 2016.

Interested persons are invited to submit such comments or information electronically to *OTEXA_MoroccoFTA@trade.gov,* and/or in hard copy to: Chairman, Committee for the Implementation of Textile Agreements, Room 30001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

If comments include business confidential information, commenters must submit a business confidential version in hard copy to the Chairman of CITA, and also provide a public version, either in hard copy or electronically. CITA will protect any information that is marked business confidential from disclosure to the full extent permitted by law. All public versions of comments will be posted on OTEXA's Web site for Commercial Availability proceedings under the Morocco FTA: *http://otexa.trade.gov/Morocco_CA.htm.*

Joshua Teitelbaum,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2016–04450 Filed 2–29–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; Nguran Corporation; Correction

AGENCY: National Security Agency, DoD.

ACTION: Notice; correction.

SUMMARY: On Friday, February 5, 2016 (81 FR 6244), the Department of Defense published a notice titled ''Notice of Intent to Grant an Exclusive License; Nguran Corporation.'' Subsequent to the publication of the notice, DoD realized that the patent number cited in the **SUMMARY** section was not correct. This notice corrects the patent number.

DATES: This correction is effective March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Aaron Siegel, 571–372–0488.

SUPPLEMENTARY INFORMATION: On page 6244, in the **SUMMARY** section, in the second column, in the third and fourth lines from the top, ''No. 14/120,606'' should read ''No. 14/120,626.''

Dated: February 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–04380 Filed 2–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Travel Management Office, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Defense Travel Management Office is publishing Civilian Personnel Per Diem Bulletin Number 301. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States when applicable. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 301 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Defense Travel Management Office for non-foreign areas outside the contiguous United States. It supersedes Civilian Personnel Per Diem Bulletin Number 300. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. Civilian Bulletin 301 includes updated rates for Alaska.

Dated: February 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	120		76		196	03/01/2016
ADAK						
10/01 - 04/30	150		51		201	03/01/2016
05/01 - 09/30	192		51		243	03/01/2016
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	339		114		453	03/01/2016
10/01 - 05/15	99		114		213	03/01/2016
BARROW						
01/01 - 12/31	205		96		301	03/01/2016
BARTER ISLAND LRRS						
01/01 - 12/31	120		76		196	03/01/2016
BETHEL						
01/01 - 12/31	179		121		300	03/01/2016
BETTLES						
01/01 - 12/31	175		79		254	03/01/2015
CAPE LISBURNE LRRS						
01/01 - 12/31	120		76		196	03/01/2016
CAPE NEWENHAM LRRS						
01/01 - 12/31	120		76		196	03/01/2016
CAPE ROMANZOF LRRS						
01/01 - 12/31	120		76		196	03/01/2016
CLEAR AB						
01/01 - 12/31	120		76		196	03/01/2016
COLD BAY LRRS						
01/01 - 12/31	120		76		196	03/01/2016
COLDFOOT						
01/01 - 12/31	165		70		235	10/01/2006
COPPER CENTER						
05/15 - 09/15	150		86		236	03/01/2016

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/16 - 05/14	115		86		201	03/01/2016
CORDOVA						
01/01 - 12/31	140		94		234	03/01/2016
CRAIG						
04/01 - 09/30	151		74		225	03/01/2016
10/01 - 03/31	88		74		162	03/01/2016
DEADHORSE						
01/01 - 12/31	170		51		221	03/01/2016
DELTA JUNCTION						
05/01 - 09/30	169		60		229	03/01/2015
10/01 - 04/30	139		57		196	03/01/2015
DENALI NATIONAL PARK						
06/01 - 08/31	185		80		265	03/01/2016
09/01 - 05/31	139		80		219	03/01/2016
DILLINGHAM						
10/16 - 04/30	220		85		305	03/01/2016
05/01 - 10/15	350		85		435	03/01/2016
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	142		77		219	03/01/2016
EARECKSON AIR STATION						
01/01 - 12/31	120		76		196	03/01/2016
EIELSON AFB						
05/15 - 09/15	154		78		232	03/01/2016
09/16 - 05/14	75		78		153	03/01/2016
ELFIN COVE						
01/01 - 12/31	275		51		326	03/01/2016
ELMENDORF AFB						
05/16 - 09/30	339		114		453	03/01/2016
10/01 - 05/15	99		114		213	03/01/2016
FAIRBANKS						
09/16 - 05/14	75		78		153	03/01/2016
05/15 - 09/15	154		78		232	03/01/2016
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/01/2002

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
FORT YUKON LRRS						
01/01 - 12/31	120		76		196	03/01/2016
FT. GREELY						
05/01 - 09/30	169		60		229	03/01/2015
10/01 - 04/30	139		57		196	03/01/2015
FT. RICHARDSON						
05/16 - 09/30	339		114		453	03/01/2016
10/01 - 05/15	99		114		213	03/01/2016
FT. WAINWRIGHT						
05/15 - 09/15	154		78		232	03/01/2016
09/16 - 05/14	75		78		153	03/01/2016
GAMBELL						
01/01 - 12/31	133		51		184	03/01/2016
GLENNALLEN						
05/15 - 09/15	150		86		236	03/01/2016
09/16 - 05/14	115		86		201	03/01/2016
HAINES						
01/01 - 12/31	107		101		208	01/01/2011
HEALY						
09/01 - 05/31	139		80		219	03/01/2016
06/01 - 08/31	185		80		265	03/01/2016
HOMER						
05/01 - 09/30	194		90		284	03/01/2016
10/01 - 04/30	89		90		179	03/01/2016
JB ELMENDORF-RICHARDSON						
05/16 - 09/30	339		114		453	03/01/2016
10/01 - 05/15	99		114		213	03/01/2016
JUNEAU						
05/01 - 09/30	159		88		247	03/01/2016
10/01 - 04/30	125		88		213	03/01/2016
KAKTOVIK						
01/01 - 12/31	165		86		251	10/01/2002
KAVIK CAMP						
01/01 - 12/31	250		51		301	03/01/2016

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENAI-SOLDOTNA						
05/01 - 10/31	179		106		285	03/01/2016
11/01 - 04/30	84		106		190	03/01/2016
KENNICOTT						
01/01 - 12/31	285		85		370	03/01/2016
KETCHIKAN						
04/01 - 10/01	250		97		347	03/01/2016
10/02 - 03/31	99		97		196	03/01/2016
KING SALMON						
05/01 - 10/01	225		91		316	10/01/2002
10/02 - 04/30	125		81		206	10/01/2002
KING SALMON LRRS						
01/01 - 12/31	120		76		196	03/01/2016
KLAWOCK						
04/01 - 09/30	151		74		225	03/01/2016
10/01 - 03/31	88		74		162	03/01/2016
KODIAK						
05/01 - 09/30	157		81		238	03/01/2016
10/01 - 04/30	100		81		181	03/01/2016
KOTZEBUE						
01/01 - 12/31	219		105		324	03/01/2016
KULIS AGS						
05/16 - 09/30	339		114		453	03/01/2016
10/01 - 05/15	99		114		213	03/01/2016
MCCARTHY						
01/01 - 12/31	285		85		370	03/01/2016
MCGRATH						
01/01 - 12/31	160		65		225	03/01/2016
MURPHY DOME						
05/15 - 09/15	154		78		232	03/01/2016
09/16 - 05/14	75		78		153	03/01/2016
NOME						
01/01 - 12/31	165		84		249	03/01/2016
NUIQSUT						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	234		51		285	03/01/2016
OLIKTOK LRRS							
	01/01 - 12/31	120		76		196	03/01/2016
PETERSBURG							
	01/01 - 12/31	120		76		196	03/01/2016
POINT BARROW LRRS							
	01/01 - 12/31	120		76		196	03/01/2016
POINT HOPE							
	01/01 - 12/31	175		85		260	03/01/2016
POINT LAY							
	01/01 - 12/31	255		51		306	03/01/2016
POINT LAY LRRS							
	01/01 - 12/31	255		51		306	03/01/2016
POINT LONELY LRRS							
	01/01 - 12/31	120		76		196	03/01/2016
PORT ALEXANDER							
	02/01 - 08/31	210		51		261	03/01/2016
	09/01 - 01/31	165		51		216	03/01/2016
PORT ALSWORTH							
	01/01 - 12/31	135		88		223	10/01/2002
PRUDHOE BAY							
	01/01 - 12/31	170		51		221	03/01/2016
SELDOVIA							
	05/01 - 09/30	194		90		284	03/01/2016
	10/01 - 04/30	89		90		179	03/01/2016
SEWARD							
	10/01 - 04/30	99		84		183	03/01/2016
	05/01 - 09/30	298		84		382	03/01/2016
SITKA-MT. EDGECUMBE							
	01/01 - 12/31	200		98		298	03/01/2016
SKAGWAY							
	04/01 - 10/01	250		97		347	03/01/2016
	10/02 - 03/31	99		97		196	03/01/2016
SLANA							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 09/30	139		55		194	02/01/2005
10/01 - 04/30	99		55		154	02/01/2005
SPARREVOHN LRRS						
01/01 - 12/31	120		76		196	03/01/2016
SPRUCE CAPE						
05/01 - 09/30	157		81		238	03/01/2016
10/01 - 04/30	100		81		181	03/01/2016
ST. GEORGE						
01/01 - 12/31	220		51		271	03/01/2016
TALKEETNA						
01/01 - 12/31	100		89		189	10/01/2002
TANANA						
01/01 - 12/31	165		84		249	03/01/2016
TATALINA LRRS						
01/01 - 12/31	120		76		196	03/01/2016
TIN CITY LRRS						
01/01 - 12/31	120		76		196	03/01/2016
TOK						
05/15 - 09/30	95		83		178	03/01/2016
10/01 - 05/14	73		83		156	03/01/2016
UMIAT						
01/01 - 12/31	350		51		401	03/01/2016
VALDEZ						
05/16 - 09/16	169		89		258	03/01/2016
09/17 - 05/15	89		89		178	03/01/2016
WAINWRIGHT						
01/01 - 12/31	175		83		258	01/01/2011
WASILLA						
05/01 - 09/30	170		105		275	03/01/2016
10/01 - 04/30	99		105		204	03/01/2016
WRANGELL						
04/01 - 10/01	250		97		347	03/01/2016
10/02 - 03/31	99		97		196	03/01/2016
YAKUTAT						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	105		94		199	01/01/2011
AMERICAN SAMOA							
AMERICAN SAMOA							
	01/01 - 12/31	139		69		208	06/01/2015
PAGO PAGO							
	01/01 - 12/31	139		69		208	12/01/2015
GUAM							
GUAM (INCL ALL MIL INSTAL)							
	01/01 - 12/31	159		87		246	07/01/2015
JOINT REGION MARIANAS (ANDERSEN)							
	01/01 - 12/31	159		87		246	07/01/2015
JOINT REGION MARIANAS (NAVAL BASE)							
	01/01 - 12/31	159		87		246	07/01/2015
TAMUNING							
	01/01 - 12/31	159		87		246	12/01/2015
HAWAII							
[OTHER]							
	01/01 - 12/31	142		108		250	06/01/2015
CAMP H M SMITH							
	01/01 - 12/31	177		117		294	06/01/2015
EASTPAC NAVAL COMP TELE AREA							
	01/01 - 12/31	177		117		294	06/01/2015
FT. DERUSSEY							
	01/01 - 12/31	177		117		294	06/01/2015
FT. SHAFTER							
	01/01 - 12/31	177		117		294	06/01/2015
HICKAM AFB							
	01/01 - 12/31	177		117		294	06/01/2015
HILO							
	01/01 - 12/31	142		108		250	12/01/2015
HONOLULU							
	01/01 - 12/31	177		117		294	06/01/2015
ISLE OF HAWAII: HILO							
	01/01 - 12/31	142		108		250	06/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ISLE OF HAWAII: OTHER						
01/01 - 12/31	189		142		331	06/01/2015
ISLE OF KAUAI						
01/01 - 12/31	305		146		451	06/01/2015
ISLE OF MAUI						
01/01 - 12/31	259		146		405	06/01/2015
ISLE OF OAHU						
01/01 - 12/31	177		117		294	06/01/2015
JB PEARL HARBOR-HICKAM						
01/01 - 12/31	177		117		294	06/01/2015
KAPOLEI						
01/01 - 12/31	177		117		294	12/01/2015
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	305		146		451	06/01/2015
KILAUEA MILITARY CAMP						
01/01 - 12/31	142		108		250	06/01/2015
LANAI						
01/01 - 12/31	229		103		332	06/01/2015
LIHUE						
01/01 - 12/31	305		146		451	12/01/2015
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		117		294	06/01/2015
MCB HAWAII						
01/01 - 12/31	177		117		294	06/01/2015
MOLOKAI						
01/01 - 12/31	157		86		243	06/01/2015
NAS BARBERS POINT						
01/01 - 12/31	177		117		294	06/01/2015
PEARL HARBOR						
01/01 - 12/31	177		117		294	06/01/2015
PMRF BARKING SANDS						
01/01 - 12/31	305		146		451	06/01/2015
SCHOFIELD BARRACKS						
01/01 - 12/31	177		117		294	06/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
TRIPLER ARMY MEDICAL CENTER						
01/01 - 12/31	177		117		294	06/01/2015
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		117		294	06/01/2015
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		81		206	06/01/2015
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	99		102		201	07/01/2015
ROTA						
01/01 - 12/31	130		107		237	07/01/2015
SAIPAN						
01/01 - 12/31	140		98		238	07/01/2015
TINIAN						
01/01 - 12/31	99		102		201	07/01/2015
PUERTO RICO						
[OTHER]						
01/01 - 12/31	109		112		221	06/01/2012
AGUADILLA						
01/01 - 12/31	171		84		255	11/01/2015
BAYAMON						
06/01 - 11/30	167		88		255	12/01/2015
12/01 - 05/31	195		88		283	12/01/2015
CAROLINA						
06/01 - 11/30	167		88		255	12/01/2015
12/01 - 05/31	195		88		283	12/01/2015
CEIBA						
01/01 - 12/31	139		92		231	10/01/2012
CULEBRA						
01/01 - 12/31	150		98		248	03/01/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	139		92		231	10/01/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
06/01 - 11/30	167		88		255	12/01/2015
12/01 - 05/31	195		88		283	12/01/2015
HUMACAO						
01/01 - 12/31	139		92		231	10/01/2012
LUIS MUNOZ MARIN IAP AGS						
06/01 - 11/30	167		88		255	12/01/2015
12/01 - 05/31	195		88		283	12/01/2015
LUQUILLO						
01/01 - 12/31	139		92		231	10/01/2012
MAYAGUEZ						
01/01 - 12/31	109		112		221	09/01/2010
PONCE						
01/01 - 12/31	149		89		238	09/01/2012
RIO GRANDE						
01/01 - 12/31	169		123		292	06/01/2012
SABANA SECA [INCL ALL MILITARY]						
06/01 - 11/30	167		88		255	12/01/2015
12/01 - 05/31	195		88		283	12/01/2015
SAN JUAN & NAV RES STA						
12/01 - 05/31	195		88		283	12/01/2015
06/01 - 11/30	167		88		255	12/01/2015
VIEQUES						
01/01 - 12/31	175		95		270	03/01/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	247		110		357	06/01/2015
12/15 - 04/14	299		116		415	06/01/2015
ST. JOHN						
05/01 - 12/03	170		107		277	08/01/2015
12/04 - 04/30	230		113		343	08/01/2015
ST. THOMAS						
01/01 - 12/31	240		112		352	08/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	173		66		239	07/01/2014

[FR Doc. 2016–04456 Filed 2–29–16; 8:45 a.m.]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy (SECNAV) Advisory Panel will meet to review the findings and recommendations from the Panel's Report on ways to establish a culture of innovation in the Department of the Navy.

DATES: The meeting will be held on Thursday, March 17, 2016, from 12:30 p.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Pentagon, in Room 4B746, 1000 Navy Pentagon, Washington, DC 20350–1000.

Building Access: Public access is limited due to the Pentagon Security requirements. Any individual wishing to attend this meeting should contact Ms. Cassandra Dean at 703–697–2386 no later than March 9, 2016. Members of the public who do not have Pentagon access will be required to provide Name, Date of Birth and Social Security Number by March 9, 2016, in order to obtain visitor's clearance. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this meeting must enter through the Pentagon's Metro Entrance with sufficient time to complete security screening between 11:45 a.m. and 12:00 p.m., where they will need two forms of identification in order to receive a visitor badge and meet their escort. Members will then be escorted to Room 4B746 to attend the meeting of the Advisory Panel. Members of the public must remain with the designated escort at all times while in the Pentagon. After the meeting is adjourned, members of the public will be escorted back to the Pentagon Metro Entrance.

FOR FURTHER INFORMATION CONTACT: Commander Randall Biggs, SECNAV Advisory Panel, 1000 Navy Pentagon, Washington, DC 20350–1000, 703–695–3042.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

12:40 p.m.–1:00 p.m.—Panel Report;
1:00 p.m.–1:10 p.m.—Public Comment (if time permits; written public comments are encouraged);
1:15 p.m.–1:30 p.m.—Panel Deliberations.

Individuals or interested groups may submit written statements for consideration by the SECNAV Advisory Panel at any time or in response to the agenda of a schedule meeting. If the written statement is in response to the agenda mentioned in this meeting notice, it must be received at least 5 business days prior to the meeting in question. All written comments should be submitted via email to *SNAP@Navy.mil.* The DFO will review all timely submissions with the SECNAV Advisory Panel before the meeting that is the subject of this notice. All requests can be submitted to the Designated Federal Officer (DFO) at the address detailed below.

To contact the DFO write to: Deputy Under Secretary of the Navy, (Policy), Secretary of the Navy Advisory Panel, Captain Christopher Rodeman, Designated Federal Officer, 1000 Navy Pentagon, Washington, DC 20350–1000.

Dated: February 17, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–04572 Filed 2–26–16; 4:15 pm]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program Between the Department of Education (ED) and the Social Security Administration (SSA)

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendments of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of computer matching programs, notice is hereby given of the renewal of the computer matching program between ED (recipient agency) and the SSA (source agency). This renewal of the computer matching program will become effective as explained in paragraph 5.

DATES:

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a) OMB Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, published in the **Federal Register** on June 19, 1989 (54 FR 25818), and OMB Circular No. A–130, Transmittal Memorandum #4, Management of Federal Information Resources (November 28, 2000), we provide the following information:

1. *Names of Participating Agencies.*

The U.S. Department of Education and the Social Security Administration.

2. *Purpose of the Match.*

The purpose of this matching program between ED and SSA is to assist the Secretary of Education with verification of immigration status and Social Security numbers (SSNs) under 20 U.S.C. 1091(g) and (p). SSA will verify the issuance of an SSN to, and will confirm the citizenship status of, those students and parents applying for financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). Verification of this information by SSA will help ED satisfy its obligation to ensure that individuals applying for financial assistance meet eligibility requirements imposed by the HEA.

Verification by this computer matching program effectuates the purpose of the HEA because it provides an efficient and comprehensive method of verifying the accuracy of each individual's SSN and claim to a citizenship status that permits that individual to qualify for title IV, HEA assistance.

3. *Authority for Conducting the Matching Program.*

ED is authorized to participate in the matching program under sections 428B(f) (20 U.S.C. 1078–2(f)), 483(a)(12) (20 U.S.C. 1090(a)(12)), 484(g) (20 U.S.C. 1091(g)), and 484(p) (20 U.S.C. 1091(p))of the HEA.

SSA is authorized to participate in the matching program under section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)) and the regulations promulgated pursuant to that section (20 CFR part 401).

4. *Categories of Records and Individuals Covered by the Match.*

ED's system of records entitled ''Federal Student Aid Application File'' (18–11–01), which contains the information to determine an applicant's eligibility for Federal student financial assistance, and ED's system of records entitled ''Person Authentication Service (PAS)'' (18–11–12), which contains the applicant's information to receive PAS Credentials, a user ID and password, will be matched against SSA's Master Files of Social Security Number Holders and SSN Applications System, SSA/OS, 60–0058, which maintains records about each individual who has applied for, and obtained an, SSN.

5. *Effective Date of the Matching Program.*

The matching program will be effective on the latest of the following three dates: (a) April 10, 2016; (b) 30 days after notice of the matching program has been published in the **Federal Register**, as required by 5 U.S.C. 552a(e)(12); or (c) 40 days after a report concerning the matching program has been transmitted, as required by 5 U.S.C. 552a(r), to OMB and the U.S. House Committee on Oversight and Government Reform, and the U.S. Senate Committee on Homeland Security and Governmental Affairs, unless OMB waives 10 or fewer days of this 40-day review period for compelling reasons, in which case, 30 days plus whatever number of the 10 days that OMB did not waive from the

date of the transmittal of the report to OMB and Congress.

The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.*

Individuals wishing to comment on this matching program, or to obtain additional information about the program, including requesting a copy of the computer matching agreement between ED and SSA, should contact Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385. If you use a telecommunications device (TDD) for the deaf or text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the contact person listed in the preceding paragraph.

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/fsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 16, 2016.

James W. Runcie,

Chief Operating Officer Federal Student Aid.

[FR Doc. 2016–04465 Filed 2–29–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of 229 Boundary for the Thomas Jefferson National Accelerator Facility (Also Known as Jefferson Lab)

AGENCY: Department of Energy (DOE).

ACTION: Notice of 229 Boundary for the Thomas Jefferson National Accelerator Facility (also known as Jefferson Lab).

SUMMARY: Notice is hereby given that the U.S. Department of Energy, pursuant to Section 229 of the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR part 860 published in the **Federal Register** on August 26, 1963 (28 FR 8400), prohibits the unauthorized entry, as provided in 10 CFR 860.3 and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.4, into or upon the following described facilities of the Thomas Jefferson National Accelerator Facility of the United States Department of Energy. The following amendments are made:

The U.S. Department of Energy installation known as the Thomas Jefferson National Accelerator Facility is located in the Second Civil District of Newport News, Virginia, within the corporate limits of the City of Newport News. The facility is located on a 169 acre federal reservation. North of the DOE-owned land is an eight acre parcel referred to as the Virginia Associated Research Campus (VARC) which is owned and operated by the Commonwealth of Virginia and leased to Southeastern Universities Research Association (SURA) which, in turn, subleases five acres of this property to DOE for use in support of the Laboratory. The facility is located on the east side of State Route 143 (Jefferson Avenue), between the intersections of City Center Boulevard and Hogan Drive. The 229 Boundary of this facility is indicated by a combination of main entry signage, chain link fence, and guardrails which surround the facility.

FOR FURTHER INFORMATION CONTACT: Ms. Tracye M. Baber; Real Estate Contracting Officer; DOE Oak Ridge Office; Post Office Box 2001; Oak Ridge, Tennessee 37831; Telephone: (865) 241–5627.

SUPPLEMENTARY INFORMATION: This security boundary is designated pursuant to Section 229 of the Atomic Energy Act of 1954.

Issued in Oak Ridge, Tennessee, on February 22, 2016.

Tracye M. Baber,

Real Estate Contracting Officer.

[FR Doc. 2016–04432 Filed 2–29–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–6–001; ER16–121–000]

PJM Interconnection, L.L.C.; Notice Inviting Post-Technical Conference Comments

On February 4, 2016, Federal Energy Regulatory Commission (Commission) staff conducted a technical conference concerning PJM Interconnection, L.L.C.'s (PJM) existing and proposed Auction Revenue Rights (ARR) and Financial Transmission Rights (FTR) tariff provisions. All interested persons are invited to file post-technical conference comments on PJM's filings and the topics discussed during the technical conference, including those indicated below.

Regarding PJM's filing and proposed changes, specifically:

- Whether PJM's conservative modeling of outages that limited the allocation of Stage 1B ARRs have resulted in an inequitable cost shift, and please explain why.
- PJM proposes to eliminate portfolio netting. Comment on the current practice of netting positively valued FTRs against negatively valued FTRs within an FTR holder's portfolio. Do the current tariff provisions on netting work to protect the markets against the potential exercise of manipulation, and if so, how? If netting is eliminated and causes the potential for the exercise of manipulation, what measures would need to be put into place to prevent potential market manipulation? Would allocating surplus funds to load rather than to FTR holders, or carrying surplus funds forward to fund any future revenue inadequacy be ways of addressing potential manipulation?
- The appropriateness of using the 1.5 percent adder for all zones, regardless of the actual zonal load growth rate and negative load growth projections for some areas; and the appropriateness of conducting the 10-year study with different growth rates as a sensitivity study, as is done for other RTEP studies. Is the cost of building transmission as a result of the 1.5 percent adder justified by the benefit of being able to accommodate the current allocations in Stage 1A?

Regarding PJM's proposed solutions in the context of its current tariff, please discuss if there are other solutions to consider. Specifically, please comment on:

- If infeasible Stage 1A ARRs should continue to be awarded and treated as they are today.

• The options and implications for, and potential benefits or drawbacks of, ARR allocation based on more frequent updates of the Simultaneous Feasibility Test model, which could, for example, allow for seasonal variations of line ratings, as well as more timely recognition and modeling of transmission outages and upgrades placed into service.

• The options to update PJM's Simultaneous Feasibility Test model, including source points and sink points, to reflect current system usage and topology; concerns about updating the model; the potential benefits or drawbacks for updating the model; and processes for allowing more frequent updates. If the Simultaneous Feasibility Test model were to be updated more frequently, would infeasible ARRs continue to exist?

• Whether the incentives for Transmission Owners to schedule outages and conduct timely work align with ARR/FTR construct, and whether there are any proposals that can improve this alignment; and the effectiveness of the current reporting requirements for Transmission Owners to share information with PJM.

• Whether continuing to include balancing congestion [1] in the definition of FTRs is appropriate (and why), or whether FTRs should be defined and settled only including day-ahead congestion. Are there any aspect(s) of balancing congestion that should be included in the definition of FTRs, and, if so, what are they and why they should be included?

Commenters need not address every question and may provide comments on relevant issues other than those listed above. These comments are due no later than 5:00 p.m. Eastern Standard Time (EST) on March 15, 2016. Reply comments are due on or before 5:00 p.m. EST on March 29, 2016. The written comments will be included in the formal record for the proceeding, which, together with the record developed to date, will form the basis for further Commission action.

For more information about this Notice, please contact:

Pamela Quinlan (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6179, *Pamela.Quinlan@ferc.gov*

Kent Carter (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8604, *Kent.Carter@ferc.gov*

Daniel Kheloussi (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6391, *Daniel.Kheloussi@ferc.gov*

Dated: February 23, 2016.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2016–04387 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

[1] Negative balancing congestion occurs when real-time transmission capacity is less than day-ahead transmission capacity. FTRs are allocated negative balancing congestion charges, which in turn can result in FTR underfunding because the revenues allocated for meeting the FTR funding target amount are decreased.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of Public Service Company of Colorado, Tucson Electric Power Company, UNS Electric, Inc., Public Service Company of New Mexico, Arizona Public Service Company, El Paso Electric Company, Black Hills Power, Inc., Black Hills Colorado Electric Utility Company, LP, Cheyenne Light, Fuel, & Power Company, Arizona Public Service Company, and NV Energy, Inc.:

Regional Stakeholder Meeting

February 24, 2016, 1 p.m.–4:30 p.m. (MST)

Planning Management Committee Meeting

April 5, 2016, 9 a.m.–12 p.m. (PST)

The above-referenced meetings will be held at: SRP PERA Club, 1 E. Continental Drive, Tempe, Arizona 85281.

The above-referenced meetings will be available via web conference and teleconference.

The above-referenced meetings are open to stakeholders.

Further information may be found at *http://www.westconnect.com/index.php.*

The discussions at the meetings described above may address matters at issue in the following proceeding:

ER16–912, *Arizona Public Service Company.*

For more information contact Nicole Cramer, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6775 or *nicole.cramer@ferc.gov.*

Dated: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04388 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14677–001]

Clark Canyon Hydro, LLC ; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License for a Major Water Power Project at an Existing Dam, 5 Megawatts or Less.

b. *Project No.:* 14677–001.

c. *Date filed:* November 23, 2015.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* On the River, in the Town of Dillon, Beaverhead County, Montana. The project would occupy 62.1 acres of land owned by the U.S. Bureau of Reclamation and 0.2 acres of land owned by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Gangemi, (406) 249–3972, email at *john.gangemi@erm.com.*

i. *FERC Contact:* Kelly Wolcott, (202) 502–6480, email at *kelly.wolcott@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions: 30 days from the issuance date of this notice; reply comments are due 45 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can

submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14677–001.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Clark Canyon Dam Hydroelectric Project would utilize the U.S. Bureau of Reclamation's Clark Canyon Dam and outlet works including an intake structure and concrete conduit in the reservoir. The project would consist of the following new facilities: (1) A 360-foot-long, 8-foot-diameter steel penstock within the existing concrete conduit, ending in a trifurcation; (2) two 35-foot-long, 8-foot-diameter penstocks extending from the trifurcation to the powerhouse, transitioning to 6-foot-diameter before entering the powerhouse; (3) a 10-foot-long, 8-foot-diameter steel penstock leaving the trifurcation and ending in a 7-foot-diameter cone valve and reducer to control discharge into the existing outlet stilling basin; (4) a 65-foot-long, 46-foot-wide reinforced concrete powerhouse containing two vertical Francis-type turbine/generator units with a total capacity of 4.7 megawatts; (5) two 25-foot-long steel draft tubes transitioning to concrete draft tube/tailrace section; (6) a 17-foot-long, 15-foot-diameter tailrace channel connecting with the existing spillway stilling basin; (7) a 45-foot-long, 10-foot-wide aeration basin downstream of the powerhouse with three frames containing 330 diffusers; (8) a 1,100-foot-long, 4.16-kilovolt (kV) buried transmission line from the powerhouse to a substation; (9) a substation containing step-up transformers and switchgear; (10) a 7.9-mile-long, 69-kV transmission line extending from the project substation to the Peterson Flat substation (the point of interconnection); and (11) appurtenant facilities. The estimated annual generation of the Clark Canyon Dam Project would be 15.4 gigawatt-hours. All project facilities would be located on federal lands owned by the U.S. Bureau of Reclamation and the U.S. Bureau of Land Management. The applicant proposes to operate the project as run-of-release.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04392 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–32–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Planned Cedar Station Upgrade Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will

discuss the environmental impacts of the Cedar Station Upgrade Project involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Dakota County, Minnesota. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 24, 2016.

If you sent comments on this project to the Commission before the opening of this docket on September 28, 2015, you will need to file those comments in Docket No. PF15–32–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–32–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public scoping meeting its staff will conduct in the project area, scheduled as follows.

FERC Public Scoping Meeting for the Cedar Station Upgrade Project

Location	Date and Time
Hilton Garden Inn, 1975 Rahncliff Court, Eagan, MN 55122.	Tuesday, March 15, 2016, 11:30 a.m. until 7:30 p.m. local time

You may attend *at any time* during the meeting, as the primary goal of a scoping meeting is for us to have your verbal environmental concerns documented. There will not be a formal presentation by Commission staff, but FERC staff will be available to answer your questions about the FERC environmental review process. Representatives of Northern will also be present to answer questions about the project.

Verbal comments will be recorded by a court reporter and transcripts will be placed into the docket for the project and made available for public viewing on FERC's eLibrary system (see page 7 ''Additional Information'' for instructions on using eLibrary). It is important to note that verbal comments hold the same weight as written or electronically submitted comments. If a significant number of people are interested in providing verbal comments, a time limit of 3 to 5 minutes may be implemented for each commenter to ensure all those wishing to comment have the opportunity to do so within the designated meeting time. Time limits will be strictly enforced if they are implemented.

Summary of the Planned Project

Northern plans to construct and operate approximately 7.8 miles of 20-inch-diameter pipeline from its existing Rosemont Junction in Rosemont, Minnesota, to its existing Cedar Station Meter Station in Eagan, Minnesota. The Cedar Station Upgrade Project would allow Northern to increase the pressure from 400 pounds per square inch gauge (psig) to 650 psig at the Cedar Station. According to Northern, its project would accommodate a contractual obligation to meet a delivery pressure for Northern States Power Company's Black Dog Generating Station.

The Cedar Station Upgrade Project would consist of the following facilities:

- 7.8 miles of 20-inch-diameter pipeline loop [1]
- a pig [2] launcher and receiver;
- modified and new regulators; and
- cathodic protection test stations.

The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the planned facilities would disturb about 114 acres of land for the aboveground facilities and the pipeline. Following construction, Northern would maintain about 43 acres for permanent operation of the project's facilities; the remaining acreage would

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 7 of this notice.

be restored and revert to former uses. About 90 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Minnesota State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Northern. This preliminary list of issues may change based on your comments and our analysis.

- Alternative routes
- Recreational impacts
- Forested impacts
- Residential construction

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Northern files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[6] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–32). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04393 Filed 2–29–16; 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 exempt wholesale generator filings:

Docket Numbers: EG16–56–000.

Applicants: Red Horse III, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Red Horse III, LLC.

Filed Date: 2/23/16.

Accession Number: 20160223–5123.

Comments Due: 5 p.m. ET 3/15/16.

Docket Numbers: EG16–57–000.

Applicants: 62SK 8ME LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 62SK 8ME LLC.

Filed Date: 2/23/16.

Accession Number: 20160223–5126.

Comments Due: 5 p.m. ET 3/15/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–984–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: PG&E UOG SGIA and LGIA Revisions to be effective 4/25/2016.

Filed Date: 2/22/16.

Accession Number: 20160222–5184.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: ER16–985–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Limited Section 205 Filing—IRS Normalization ADIT to be effective 4/23/2016.

Filed Date: 2/22/16.

Accession Number: 20160222–5210.

Comments Due: 5 p.m. ET 3/14/16

Docket Numbers: ER16–986–000.

Applicants: The Narragansett Electric Company.

Description: § 205(d) Rate Filing: Cost Reimbursement Agreement between Narragansett & CV South Street Landing LLC to be effective 2/19/2016.

Filed Date: 2/22/16.

Accession Number: 20160222–5224.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: ER16–987–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: Amended WPL–MGE LBAOCA Agreement to be effective 2/22/2016.

Filed Date: 2/22/16.

Accession Number: 20160222–5225.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: ER16–988–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: City of Chattahoochee NITSA OATT SA No. 154 to be effective 3/1/2016.

Filed Date: 2/23/16.

Accession Number: 20160223–5033.

Comments Due: 5 p.m. ET 3/15/16.

Docket Numbers: ER16–989–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Market-Based Rates Tariff 2015 Update to be effective 4/24/2016.

Filed Date: 2/23/16.

Accession Number: 20160223–5043.

Comments Due: 5 p.m. ET 3/15/16.

Docket Numbers: ER16–990–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp NITSA Low Voltage Facilities Chgs to be effective 4/1/2016.

Filed Date: 2/23/16.

Accession Number: 20160223–5074.

Comments Due: 5 p.m. ET 3/15/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR15–2–003.

Applicants: North American Electric Reliability Corporation.

Description: Annual Compliance Monitoring and Enforcement Program Filing of North American Electric Reliability Corporation.

Filed Date: 2/18/16.

Accession Number: 20160218–5218.

Comments Due: 5 p.m. ET 3/10/16.

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: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04386 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–620–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company, LLC submits a request for waiver of the Commission's capacity release regulations to allow a transaction to occur under RP16–620.

Filed Date: 2/22/16.

Accession Number: 20160222–5161.

Comments Due: 5 p.m. ET 3/7/16.

Docket Numbers: RP16–621–000.

Applicants: PGPipeline LLC.

Description: Section 4(d) Rate Filing: Annual FRP Filing to be effective 4/1/2016.

Filed Date: 2/22/16.

Accession Number: 20160222–5182.

Comments Due: 5 p.m. ET 3/7/16.

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.

Filings in Existing Proceedings

Docket Numbers: RP15–1322–002.
Applicants: Sabine Pipe Line LLC.
Description: Compliance filing Sabine Complilance Filing February 22, 2016 to be effective 2/5/2016.
Filed Date: 2/22/16.
Accession Number: 20160222–5076.
Comments Due: 5 p.m. ET 3/7/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04391 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. CP15–500–000	2–8–2016	Grouped Letters [1].
2. CP15–500–000	2–8–2016	Grouped Letters [2].
3. CP15–138–000	2–8–2016	Maddie Musser.
4. CP16–21–000	2–9–2016	Polar Beverages.
5. CP15–500–000	2–10–2016	Grouped Letters [3].
6. CP15–500–000	2–11–2016	Ellen McRae.
7. CP15–500–000	2–11–2016	Rev. Barry Abraham Zavah.
8. CP15–500–000	2–12–2016	Grouped Letters [4].
9. CP15–500–000	2–12–2016	Grouped Letters [5].
10. CP15–500–000	2–16–2016	Grouped Letters [6].
11. CP15–500–000	2–16–2016	Grouped Letters [7].
12. CP15–500–000	2–16–2016	Asa Daugherty.
Exempt:		
1. ER16–307–000	2–8–2016	U.S. Congress [8].
2. CP15–554–000	2–8–2016	State of Virginia Delegate Paul E. Krizek.
3. CP14–347–000	2–8–2016	U.S. Senator Bill Cassidy, M.D.
4. CP16–21–000	2–11–2016	State of New Hampshire Governor Margaret Wood Hassan.
5. CP16–21–000	2–11–2016	U.S. House Representative Niki Tsongas.
6. CP16–21–000	2–11–2016	U.S. Senator Kelly A. Ayotte.
7. CP15–558–000	2–17–2016	FERC Staff [9].
8. CP15–18–000 CP15–18–001	2–17–2016	FERC Staff [10].
9. P–2629–000	2–17–2016	FERC Staff [11].
10. CP16–4–000	2–17–2016	FERC Staff [12].
11. CP14–347–000	2–22–2016	U.S. House Representative Charles W. Boustany Jr., MD.

[1] Mass Mailing: 17 letters have been sent to FERC Commissioners and staff under this docket number.
[2] Mass Mailing: 12 letters have been sent to FERC Commissioners and staff under this docket number.

[3] Mass Mailing: 2 letters have been sent to FERC Commissioners and staff under this docket number.
[4] Mass Mailing: 2 letters have been sent to FERC Commissioners and staff under this docket number.
[5] Mass Mailing: 2 letters have been sent to FERC Commissioners and staff under this docket number.
[6] Mass Mailing: 8 letters have been sent to FERC Commissioners and staff under this docket number.
[7] Mass Mailing: 2 letters have been sent to FERC Commissioners and staff under this docket number.
[8] Senator Sheldon Whitehouse, Senator Jack Reed, House Representative James R. Langevin, and House Representative David N. Cicilline.
[9] Memo forwarding letter dated January 29, 2016 from Paul A. Raber of Society for Pennsylvania Archaeology.
[10] Meeting summary from February 17, 2016 telephone call with Brian Scofield of Pennsylvania Field Office of the Fish and Wildlife Service regarding Eastern Shore White Oak Machine Expansion Project.
[11] Email Record dated February 17, 2016 between FERC Staff and Jeff Crocker of Vermont Department of Environment Conservation.
[12] Conference Call Notes from February 9, 2016 call between FERC and NPS regarding the Orion Project.

Dated: February 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–04390 Filed 2–29–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0297; FRL–9942–98–OW]

Request for Nominations for Peer Reviewers for EPA's Biologically Based Dose-Response (BBDR) Model for Perchlorate in Drinking Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations for peer reviewers.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites the public to nominate scientific experts to be considered as peer reviewers for the contractor-managed, external peer review of the draft Biologically Based Dose-Response model for perchlorate in drinking water and the draft model support document. The draft model predicts changes in thyroid hormones in sensitive life stages exposed to different dietary iodide and perchlorate levels. EPA has been working with scientists at the Food and Drug Administration to develop the model recommended by EPA's Science Advisory Board for the derivation of a maximum contaminant level goal for perchlorate in drinking water. The model integrates previous perchlorate and iodine models for thyroid hormones in formula-fed and nursing infants, as well as lactating women. The model predicts the effects of perchlorate on serum thyroid hormone concentrations in infants exposed via ingestion of formula mixed with contaminated drinking water or breast milk. EPA anticipates releasing the draft model and draft model support document for peer review and public comment in the near future (the exact date to be determined).

DATES: The nomination period for scientific experts begins on March 1, 2016 and ends on March 31, 2016.

ADDRESSES: Any interested person or organization may nominate scientific experts to be considered as peer reviewers. Nominations should be submitted in time to arrive no later than March 31, 2016. Self-nominations will also be accepted. Nominations should be submitted to the EPA contractor, Versar, Inc., using the following email address: *perchlorate@versar.com* (the subject line should read: BBDR Model Peer Review). Nominations will also be accepted via U.S. Postal Service mail or by an overnight/priority mail service. Mailed nominations should be addressed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151 (Attention: David Bottimore). Nominations should include all nominee information outlined in section II of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Questions concerning the nomination process should be directed to the EPA contractor, Versar, Inc., at 6850 Versar Center, Springfield, VA 22151; by email to *perchlorate@versar.com* (the subject line should read: BBDR Model Peer Review); or by phone: (703) 642–6815 (ask for David Bottimore). For additional information concerning the draft BBDR model and draft model support document, please contact Russ Perkinson at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Standards and Risk Management Division, (Mail Code 4607M), 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 202–564–4901; or email: *perkinson.russ@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information on the Draft Biologically Based Dose-Response (BBDR) Model and Draft Model Support Document for Perchlorate in Drinking Water

EPA is developing a National Primary Drinking Water Regulation (NPDWR) for Perchlorate in accordance with the requirements under the Safe Drinking Water Act (SDWA). Among these requirements are that the agency must request comment from the EPA's Science Advisory Board (SAB) prior to proposal of a maximum contaminant level goal (MCLG) and a NPDWR (42 U.S.C. 1412(e)).

In 2012, EPA sought guidance from the SAB on how best to consider and interpret life stage information, epidemiologic and biomonitoring data, physiologically based pharmacokinetic (PBPK) analyses and the totality of perchlorate health information to derive an MCLG for perchlorate. The MCLG is the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MCLGs are non-enforceable public health goals.

In 2013, the SAB recommended that, ''. . . EPA derive a perchlorate MCLG that addresses sensitive life stages through physiologically-based pharmacokinetic/pharmacodynamic (PBPK/PD) modeling based upon its mode of action rather than the default MCLG approach using the reference dose and specific chemical exposure parameters'' (see Advice on Approaches to Derive a Maximum Contaminant Level Goal for Perchlorate, EPA–SAB–13–004). The SAB found that ''. . . this data-driven approach represents a more rigorous way to address differences in biology and exposure between adults and sensitive life stages than is possible with the default approach for deriving an MCLG.''

Based on the SAB's recommendations, EPA and Food and Drug Administration (FDA) scientists developed a BBDR (also known as a PBPK/PD) model to determine under what conditions of iodine nutrition and exposure to perchlorate across sensitive life stages low serum free and total thyroxine would result. EPA is considering deriving a perchlorate MCLG by linking BBDR model output to information from literature to account for adverse health outcomes.

II. How to Submit Nominations for Peer Reviewers

Expertise Sought: EPA is seeking candidates who are nationally and/or internationally recognized scientific experts to serve as external peer reviewers for the draft BBDR model and draft model support document for

perchlorate in drinking water. Nominees should possess and demonstrate background knowledge and experience in one or more of the following areas: (1) PBPK, PBPK/PD and/or BBDR modeling, (2) fetal and neonatal thyroid endocrinology (clinical and experimental), (3) iodide homeostasis, and (4) perchlorate toxicology and mode of action or adverse outcome pathway.

Selection Criteria: Selection criteria for individuals nominated to serve as external peer reviewers of the draft BBDR model and draft model support document include the following: (1) Demonstrated expertise through relevant peer reviewed publications, (2) professional accomplishments and recognition by professional societies, (3) demonstrated ability to work constructively and effectively in a committee setting, (4) absence of financial conflicts of interest, (5) no actual conflicts of interest or the appearance of lack of impartiality, (6) willingness to commit adequate time for the thorough review of the draft BBDR model and draft model support document, commencing approximately in June 2016 (exact date to be determined), and (7) availability to participate in-person in a one-day peer review meeting in the Washington, DC metro area, projected to occur in approximately August 2016 (exact date will be published in the **Federal Register** at least 30 days prior to the external peer review meeting). Further logistical information regarding the external peer review meeting will be announced at a later date in the **Federal Register**.

Required Nominee Information: To receive full consideration, the following information should be submitted to Versar (*perchlorate@versar.com*) (the subject line should read: BBDR Model Peer Review): (1) Contact information for the person making the nomination; (2) contact information for the nominee; (3) the disciplinary and specific areas of expertise of the nominee; (4) the nominee's curriculum vitae; and (5) a biographical sketch of the nominee indicating current position, educational background, past and current research activities, recent service on other advisory committees, peer review panels, editorial boards or professional organizations, sources of recent grant and/or contract support and other comments on the relevance of the nominee's expertise to this peer review topic. Compensation for non-federal peer reviewers will be provided by Versar.

Selection Process: EPA's contractor, Versar, will notify candidates of selection or non-selection. Versar may also conduct an independent search for candidates to assemble a balanced group representing the expertise needed to fully evaluate EPA's draft BBDR model and draft model support document for perchlorate in drinking water. Versar will consider and screen all candidates against the criteria previously listed. Following the screening process, Versar will narrow the list of potential reviewers to approximately 10–15 candidates. Prior to selecting the final peer reviewers, a **Federal Register** notice will be published (exact date to be determined) to solicit comments on the interim list of candidates. In that notice, the public will be requested to provide relevant information or documentation on the nominees within 30 days of the announcement of the interim list of candidates. Once Versar has considered the public comments on the interim list of candidates, Versar will select the final list of peer reviewers, based on who, collectively, will best provide expertise spanning the disciplines previously listed and (to the extent feasible) best provide a balance of perspectives.

Dated: February 21, 2016.

Joel Beauvais,

Deputy Assistant Administrator.

[FR Doc. 2016–04449 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9943–11–ORD]

Environmental Laboratory Advisory Board (ELAB) Membership

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice soliciting nominations for membership.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Environmental Laboratory Advisory Board (ELAB). The ELAB is a multi-stakeholder federal advisory committee that provides independent advice and recommendations to the EPA Administrator, Science Advisor, and Forum on Environmental Measurements (FEM) about cross-cutting issues related to enhancing EPA's measurement programs, and facilitating the operation and expansion of national environmental accreditation.

This notice solicits nominations to fill eight–nine (8–9) new vacancies. To maintain diverse representation, nominees will be selected from the following stakeholder work force sectors:

- Academia
- Business and industry
- Environmental laboratory commercial, municipal, small, other
- Environmental laboratory suppliers of services
- State and local Government agencies
- Tribal governments and indigenous groups
- Trade associations

Within these sectors, EPA is seeking nominees with knowledge in methods development; measurements; monitoring and regulatory programs; quality systems; and environmental accreditation. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered.

Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominees should possess the following qualifications:

- Demonstrated experience with environmental measurement programs and environmental accreditation;
- Willingness to commit time to the committee, and demonstrated ability to work constructively and effectively on committees;
- Excellent interpersonal, oral, and written communication and consensus-building skills; and
- Ability to serve a 2-year appointment and volunteer approximately 5–7 hours per month to support the Board's activities.

How to Submit Nominations: Nominations can be submitted in electronic format (preferred) to Ms. Lara P. Phelps, Designated Federal Officer, US EPA, MC E243–05, 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, or email to *phelps.lara@epa.gov* and should be received by April 1, 2016 for October 2016 appointment. To be considered, all nomination packages should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Brief statement describing the nominee's interest in serving on the ELAB.
- Resume describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees.

• Letter(s) of recommendation from a third party supporting the nomination.

For further questions regarding this notice, please contact Lara P. Phelps at (919) 541–5544 or *phelps.lara@epa.gov.*

Dated: February 23, 2016.

Thomas Burke,

EPA Science Advisor.

[FR Doc. 2016–04445 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9942–97–OA]

Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered SAB to: (1) Conduct a quality review of a draft SAB report on an accounting framework for biogenic carbon dioxide emissions; (2) discuss information provided by the EPA on planned actions in the Fall 2015 semi-annual regulatory agenda and their supporting science; and (3) receive briefings from the EPA Office of Research and Development and the Office of the Science Advisor.

DATES: The public meeting will be held on Thursday, March 31, 2016, from 1:30 p.m. to 5:00 p.m. and Friday April 1, 2016, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564–4885, or email at *carpenter.thomas@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the scientific and technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss and deliberate on the topics below.

(1) Quality Review of a Draft SAB Review Report on the Framework for Assessing Biogenic CO_2 Emissions From Stationary Sources

In 2012, the SAB completed a review of the first draft accounting framework addressing scientific and technical issues associated with biogenic carbon dioxide (CO_2) emissions, *Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources* (September 2011). The EPA subsequently revised the 2011 framework and requested the SAB to conduct a review of the *Framework for Assessing Biogenic CO_2 Emissions from Stationary Sources* (November 2014). The purpose of the 2014 framework is to develop a method for calculating the adjustment, or Biogenic Assessment Factor (BAF), for carbon emissions associated with the combustion of biogenic feedstocks taking into account the biological carbon cycle effects associated with their growth, harvest and processing. The SAB convened the Biogenic Carbon Emissions Panel to review the framework.

The chartered SAB will conduct a quality review of the panel's draft report before it is transmitted to the EPA Administrator. The SAB quality review process ensures that all draft reports developed by SAB panels, committees or workgroups are reviewed and approved by the Chartered SAB before being finalized and transmitted to the EPA Administrator. These reviews are conducted in a public meeting as required by FACA. Background on the current advisory activity, Biogenic Carbon Dioxide Emissions from Stationary Sources—Assessment Framework can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Biogenic%20CO2%20Framework?OpenDocument.*

(2) Discussion of Information in the Agency's Semiannual Regulatory Agenda

As part of the EPA's effort to routinely inform the SAB about proposed and planned agency actions that have a scientific or technical basis, the agency provided notice to the SAB that the Office of Management and Budget published the ''Unified (Regulatory) Agenda'' on the Web on November 20, 2015 available at *http://www.reginfo.gov/public/do/eAgendaMain.*

The SAB convened a Work Group to review information provided in the agency's Fall 2015 regulatory agenda regarding EPA planned actions and their supporting science. The SAB will discuss recommendations and information developed by the Work Group regarding the adequacy of the science supporting the planned actions. Information about this advisory activity can be found on the Web at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/SAB%20Fall%202015%20Reg%20Agenda?OpenDocument.*

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the EPA's charge, meeting materials, or the group providing advice. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Persons interested in providing oral statements at the March 31–April 1, 2016, meeting should contact Mr. Thomas Carpenter, DFO, in writing (preferably via email) at the contact information noted above by March 23, 2016 to be placed on the list of registered speakers. *Written Statements:* Written statements for the March 31–April 1, 2016, meeting should be received in the SAB Staff Office by March 23, 2016, so that the information can be made available to the SAB for its consideration prior to the meeting. Written statements should be supplied

to the DFO at the contact information above via email (preferred) or in hard copy with original signature. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Carpenter at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: February 22, 2016.

Christopher Zarba,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2016–04451 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0335; FRL–9943–13–OW]

Request for Public Comment on the Draft EPA–USGS Technical Report: Protecting Aquatic Life From Effects of Hydrologic Alteration

AGENCY: Environmental Protection Agency (EPA) and United States Geological Survey (USGS).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) and the United States Geological Survey are releasing a draft technical report: *Protecting Aquatic Life from Effects of Hydrologic Alteration,* for a 60-day public comment period. This report was developed because hydrologic alteration can be a contributor of impairment for water bodies that are designated to support aquatic life. Stresses on aquatic life associated with hydrologic alteration may be further exacerbated through climate change. Recent climate trends have included the change in frequency and duration of extreme weather events, such as droughts and floods, which can have an impact on flow and affect aquatic life.

The report is a nonprescriptive framework with information to help states, tribes, territories, water resource managers, and other stakeholders responsible for the maintenance of hydrologic flow regime to quantify flow targets for the preservation of aquatic life and habitat. This report also provides information on the relationship between hydrologic condition and water quality and gives examples of what some states and authorized tribes have done to address flow concerns using the Clean Water Act. The framework can also be used to translate narrative criteria and develop flow targets to protect aquatic life and habitat.

DATES: Comments must be received on or before May 2, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0335, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Diana Eignor, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1143; email address: *eignor.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I Get Copies of This Document and Other Related Information?

1. 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 Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

II. How will this document be used?

This draft report is a nonprescriptive framework that can be used to help quantify targets for flow regime components that are protective of aquatic life and their habitats. Flow targets can help states, tribes, and territories to prepare for changes in historic flow patterns. Maintaining flow targets may help increase a stream's resilience to climate change by reducing or avoiding intensification of existing stresses. This document, even after issued in final form, is not a rule, and it is therefore not mandatory for states and authorized tribes to adopt this framework into their water quality standards. Once the comment period has ended, EPA and the USGS will consider the comments, revise the document, as appropriate, and then publish a final document that will serve as a source of information for states, tribes, territories, and other stakeholders.

III. Solicitation of Scientific Views

EPA and USGS are soliciting additional scientific views, data, and information regarding the science and technical approach used in the derivation of this draft technical document on hydrologic alteration.

IV. Additional Information

EPA and USGS each conducted internal peer reviews of the report, and EPA managed a contractor-led independent external peer review of the Draft EPA–USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration. EPA will make the external peer review comments and Agency responses to these comments available in the docket with the revised draft technical document at *http://www.regulations.gov.*

Dated: February 22, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–04448 Filed 2–29–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0189)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. On December 15, 2015, (80 FR 77631), the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

DATES: Comments must be submitted on or before March 31, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include OMB control number ''3064–0189'' in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3016, or Manuel E. Cabeza, (202.898.3767), Counsel, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to OMB control number ''3064–0189.'' A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or Manuel E. Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

1. *Title:* Annual Stress Test Reporting; Over $50 Billion Templates.

OMB Number: 3064–0189.

Affected Public: Insured state nonmember banks.

Frequency of Response: Annually.

Estimated Number of Respondents: 4.

Estimated Number of Responses: 1.

Estimated Time per Response: 1,114 hours.

Total Annual Burden: 4,456 hours.

General Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires certain financial companies, including state nonmember banks and state savings associations, to conduct annual stress tests and requires the primary financial regulatory agency of those financial companies to issue regulations implementing the stress test requirements. A state nonmember bank or state savings association is a ''covered bank'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered bank is required to submit to the Board of Governors of the Federal Reserve System (''Board'') and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

The revisions to the DFAST–14A reporting templates consist of clarifying instructions, adding data items, deleting data items, and redefining existing data items. The proposed revisions also include a shift of the as-of date in accordance with modifications to the FDIC's stress testing rule.[1] These revisions also reflect the implementation of the final Basel III regulatory capital rule. On July 9, 2013, the FDIC approved an interim final rule that will revise and replace the FDIC's risk-based and leverage capital requirements to be consistent with agreements reached by the Basel Committee on Banking Supervision in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III).[2] The final rule was published in the **Federal Register** on April 14, 2014 (''Revised Capital Framework'').[3] The revisions include implementation of a new definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for banking organizations subject to the Advanced Approaches capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator measure. In addition, the rule will amend the methodologies for determining risk weighted assets. All banking organizations that are not subject to the Advanced Approaches Rule were required to comply with the Revised Capital Framework, as of January 1, 2015.

The proposed changes would (1) increase consistency between the DFAST–14A with the FR Y–14A, CALL Report, FFIEC 101, and FFIEC 102; (2) remove the requirement to calculate tier 1 common capital and the tier 1 common ratio; and (3) shift the as-of dates by one quarter in accordance with the modifications to the stress test rules. Furthermore, the FDIC understands that the Board is currently collecting information for the Summary Schedule via XML technology, and the FDIC would use a similar format to enhance consistency and reduce regulatory burden. Technical details on these forms would be provided separately.

Schedule A (Summary)—A.1.c.1 (General RWA)

This schedule would be removed in accordance with the proposed revisions to eliminate use of the tier 1 common ratio, *effective for the 2016 DFAST submission.*

Schedule A (Summary)—Revisions to Schedule A.1.c.2 (Standardized RWA)

This schedule would be modified to increase consistency with the FFIEC 102. Specifically, the items of the existing market risk-weighted asset portion would be replaced with the appropriate items from the FFIEC 102.

Schedule A (Summary)—Revisions to Schedule A.1.d (Capital)

The FDIC removed certain items related to tier 1 common capital, *effective for the 2016 DFAST submission.* Additionally, the FDIC added one item that captures the aggregate non-significant investments in the capital of unconsolidated financial institutions in the form of common stock and breaking out two items related to deferred tax assets into the amount before valuation allowances and the associated valuation allowance. The additional information from these changes would result in two existing items converting to derived items based

[1] *See* 79 FR 69365 (November 21, 2014).

[2] 78 FR 55340 (September 10, 2013).

[3] 79 FR 20754 (April 14, 2014).

on the additional information. *These changes would be effective for the 2017 DFAST submission.*

Schedule A (Summary)—Revisions to Schedule A.2.b (Retail Repurchase)

This schedule would be removed to reduce reporting burden, *effective for the 2017 DFAST submission.*

Schedule A (Summary)—Deletion of Schedule A.2.c (ASC 310–30)

This schedule would be removed to reduce reporting burden, *effective for the 2017 DFAST submission.*

Schedule A (Summary)—Revisions to Schedule A.7.c (PPNR Metrics)

In order to fully align the schedule with the stress scenarios, the beta information would be collected according to the scenario instead of the current ''normal environment'' requirement. The effective date for the PPNR Metrics schedule changes will be *the 2017 DFAST submission.*

Counterparty Credit Risk Schedule

This schedule would be removed to reduce reporting burden *effective for the 2016 DFAST submission.* Aggregate counterparty credit risk information will continue to be obtained through the Summary Schedule (Schedule A).

Regulatory Capital Transitions Schedule

The FDIC has modified this schedule by removing projected year six from the projection period.

Regulatory Capital Instruments Schedule

The FDIC has modified this schedule by removing line items corresponding to the general risk-based capital rules.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 25th day of February, 2016.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–04436 Filed 2–29–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:00 p.m. on Friday, March 4, 2016.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on Thursday, March 3, 2016. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. §§ 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. § 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposal to establish single-counterparty credit limits for large U.S. bank holding companies and foreign banking organizations.

Notes:

1. The staff memo to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: February 26, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–04544 Filed 2–26–16; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 16, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Castle Creek Capital Partners IV, LP, and individuals and entities that control Castle Creek Capital IV LLC, Castle Creek Advisors IV LLC; JME Advisory Corp.; Legions IV Corp.; Mikesell Advisory Corp.; Pietrzak Advisory Corp.; John M. Eggemeyer, III; Mark G. Merlo; J. Mikesell Thomas, and John T. Pietrzak,* all of Rancho Santa Fe, California; to acquire voting shares of Heritage Commerce Corp, and thereby indirectly acquire voting shares of Heritage Bank of Commerce, both in San Jose, California.

Board of Governors of the Federal Reserve System, February 25, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–04459 Filed 2–29–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086: Docket 2016–0001; Sequence 1]

General Services Administration Acquisition Regulation; Information Collection; Proposal To Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217. The approval requested includes four versions of the GSA Form 1364; GSA Forms 1364, 1364A, 1364A–1, and 1364WH. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offeror construction overhead fees.

A total of six lease contract models have been developed to meet the needs of the national leased portfolio. Five of the lease models require offerors to complete a GSA Form 1364 and four require a GSA Form 1217. The GSA Form 1364 versions requires the submission of information specifically aligned with certain leasing models and avoids mandating submission of information that is not required for use in evaluation and award under each model. The GSA Form 1217 requires the submission of information specific to the services and utilities of a building in support of the pricing detailed under GSA Form 1364. The forms relate to individual lease procurements and no duplication exists.

Three lease models, Streamlined, Standard, and Succeeding/Superseding, use GSA Form 1364. The 1364 captures all rental components, including the pricing for the initial tenant improvements. The global nature of the 1364 provides flexibility in capturing tenant improvement pricing based on either allowance or turnkey pricing, as required by the solicitation.

The Simplified Lease Model uses GSA Forms 1364A and 1364A–1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form. The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements. The 1364A–1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A–1 is separate from the proposal itself and is maintained in the lease file; it does not become an exhibit to the lease. The 1364A–1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Warehouse Lease Model uses GSA Form 1364WH. This model is specifically designed to accommodate the special characteristics of warehouse space and is optimized for space whose predominant use is for storage, distribution, or manufacturing. The 1364WH captures building characteristics unique to warehouse facilities and allows for evaluation of offers based on either area or volume calculations.

The Streamlined, Standard, Succeeding/Superseding, and Warehouse Lease Models use GSA Form 1217. GSA Form 1217 captures the estimated annual cost of services and utilities and the estimated costs of ownership, exclusive of capital charges. These costs are listed for both the entire building and the area proposed for lease to the Government, broken down into specific categories. The GSA Form 1217 was not included in the previous information collection notice and supporting statement. The previous omission was an error that is corrected by inclusion in this information collection request.

DATES: Submit comments on or before: May 2, 2016.

ADDRESSES: Submit comments identified by Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217 by any of the following methods:

- *Regulations.gov*: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost

Statement, GSA Form 1217'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217'' on your attached document.

• *Mail*: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217.

Instructions: Please submit comments only and cite Information Collection 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, General Services Acquisition Policy Division, 202–969–4066 or via email at *christina.mullins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to

(1) evaluate whether the physical attributes of offered properties meet the Government's requirements and

(2) evaluate the owner/offeror's price proposal.

B. Annual Reporting Burden

Respondents: 544.

Responses per Respondent: 2.98 (weighted average).

Total Responses: 1,623.

Hours per Response: 4.07 (weighted average).

Total Burden Hours: 6,609.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division, 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0086, Proposal to Lease Space, GSA Form 1364 and Lessor's Annual Cost Statement, GSA Form 1217, in all correspondence.

Jeffrey A. Koses,

Director, Office of Acquisition Policy & Senior Procurement Executive.

[FR Doc. 2016–04427 Filed 2–29–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0493; Docket No. CDC–2016–0022]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on the 2017 and 2019 National Youth Risk Behavior Surveys (YRBS). The goal of the study is to assess priority health-risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the United States. CDC is requesting a 3-year approval to reinstate with change the data collection for the National YRBS.

DATES: Written comments must be received on or before May 2, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0022 by any of the following methods:

• *Federal eRulemaking Portal: Regulation.gov*. Follow the instructions for submitting comments.

• *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: *All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

2017 and 2019 National Youth Risk Behavior Surveys (OMB Control No. 0920–0493)—Reinstatement with change—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB approval to reinstate with change, the data collection for the National Youth Risk Behavior Survey (YRBS), a school-based survey that has been conducted biennially since 1991. OMB approval for the 2013 YRBS and 2015 YRBS expired September 30, 2015 (OMB Control No. 0920–0493). CDC seeks a three-year approval to conduct the YRBS in Spring 2017 and Spring 2019. Minor changes incorporated into this reinstatement request include: An updated title for the information collection to accurately reflect the years in which the survey will be conducted, minor changes to the data collection instrument, and a reclassification of urban status for schools based on a different variable now present in the commercially available sampling frame.

The YRBS assesses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and young adults in the United States. Data on health risk behaviors of adolescents are the focus of approximately 65 national health objectives in Healthy People 2020, an initiative of the U.S. Department of Health and Human Services (HHS). The YRBS provides data to measure 20 of the health objectives and 1 of the Leading Health Indicators established by Healthy People 2020. In addition, the YRBS can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the Healthy People 2020 objectives addressing adolescent health risk behaviors as the YRBS. The data also will have significant implications for policy and program development for school health programs nationwide.

In Spring 2017 and Spring 2019, the YRBS will be conducted among nationally representative samples of students attending public and private schools in grades 9–12. Information supporting the YRBS also will be collected from state-, district-, and school-level administrators and teachers. The table below reports the number of respondents annualized over the 3-year project period.

There are no costs to respondents except their time. The total estimated annualized burden hours are 7,822.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State Administrators	State-level Recruitment Script for the Youth Risk Behavior Survey.	17	1	30/60	9
District Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	80	1	30/60	40
School Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	133	1	30/60	67
Teachers	Data Collection Checklist for the Youth Risk Behavior Survey.	435	1	15/60	109
Students	Youth Risk Behavior Survey	10,129	1	45/60	7,597
Total					7,822

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–04431 Filed 2–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–685, CMS–576A, CMS–10601, and CMS–R–199]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow

60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 2, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–685 End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations

CMS–576A Organ Procurement Organization's (OPOs) Health Insurance Benefits Agreement and Supporting Regulations

CMS–10601 CMS Innovation Partners Program Applications and Surveys

CMS–R–199 Medicaid Report on Payables and Receivables

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations; *Use:* Section 1881(c) of the Social Security Act establishes End Stage Renal Disease (ESRD) Network contracts. The regulations found at 42 CFR 405.2110 and 405.2112 designated 18 ESRD Networks which are funded by renewable contracts. These contracts are on 3-year cycles. To better administer the program, CMS is requiring contractors to submit semi-annual cost reports. The purpose of the cost reports is to enable the ESRD Networks to report costs in a standardized manner. This will allow CMS to review, compare and project ESRD Network costs during the life of the contract. *Form Number:* CMS–685 (OMB Control Number: 0938–0657); *Frequency:* Reporting—Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 144. (For policy questions regarding this collection contact Etleva Davis at 410–786–4013)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization's (OPOs) Health Insurance Benefits Agreement and Supporting Regulations; *Use:* The Medicare and Medicaid Programs final conditions for coverage for Organ Procurement Organizations (OPOs) require OPOs to sign agreements with the Center for Medicare and Medicaid Services (CMS) in order to be reimbursed and perform their services. The information provided on this form serves as a basis for continuing the agreements with CMS and the OPOs for participation in the Medicare and Medicaid programs for reimbursement of service. *Form Number:* CMS–576A (OMB Control Number: 0938–0512); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Melissa Rice at 410–786–3270.)

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* CMS Innovation Partners Program Applications and Surveys; *Use:* The CMS Innovation Center (CMMI) has a significant role in supporting the goals set by the Secretary of Health and Human Services to move 30 percent of Medicare fee-for-service payments to alternate payment models by the end of 2016 and ultimately 50 percent by the end of 2018. A multi-pronged approach is necessary to achieve these ambitious goals and includes the testing of innovative models around design of both payment and care delivery, the Health Care Payment and Learning Action Network (HCPLAN) and value and quality based initiatives through the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and Merit-based Incentive Payment System (MIPS). In addition to these key strategies, CMS seeks to engage individuals from the front lines of health care, who are actively supporting delivery system transformation at local and regional levels, in order to support and accelerate adoption of alternate payment models developed through the Innovation Center. This will be accomplished through the Innovation Partners Program (IPP).

The IPP will provide an opportunity for 100 selected individuals from around the country who are already leading and participating in delivery reform initiatives with local and regional networks to engage in a deeper way with CMS to enhance these efforts. During the course of one year, the IPP will immerse individuals in the strategy

and innovation work of CMS through intensive webinars and small group discussions. Program participants will engage with CMS staff in the Innovation Center and Regional Offices to inform and support regional activities supporting innovation models. In collaboration with CMS and fellow program participants, they will create partnerships regionally and across the United States.

An application process is necessary to select the individuals who will participate in IPP and is the first component of this data collection. Applicants shall likely include physicians, nurses and other clinical staff in leadership roles from various health care delivery, public health and community health organizations. The second data collection component is a set surveys and the respondents shall be only those who are participating in the program. Data from these surveys will be used to design program activities and to identify opportunities for improvement to both activities and the program overall. This data collection is necessary in order to launch and implement the IPP—a key initiative in the efforts of CMS to support the Secretary's goals. *Form Number:* CMS–10601 (OMB control number: 0938—NEW); *Frequency:* Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 850; *Total Annual Responses:* 850; *Total Annual Hours:* 1,700. (For policy questions regarding this collection contact Fran Griffin at 212–616–2370).

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Use:* The Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency-wide, audited financial statement. Collection of Medicaid data and the calculation of the Medicaid Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The Medicaid Report on Payables and Receivables will provide the information needed to calculate the Medicaid IBNR. Failure to collect this information could result in non-compliance with the law. *Form Number:* CMS–R–199 (OMB Control Number: 0938–0697); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 392. (For policy questions regarding this collection contact Beverly Boher at 410–786–7806.)

Dated: February 25, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–04463 Filed 2–29–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–3427 and CMS–10430]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 31, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease Application and Survey and Certification Report; *Use:* Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities. Part II is completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage. *Form Number:* CMS–3427 (OMB control number: 0938–0360); *Frequency:* Every three years; *Affected Public:* Private sector (Business or other for-profit and Not-for profit institutions); *Number of Respondents:* 6,138; *Total Annual Responses:* 2,046; *Total Annual Hours:* 682. (For policy questions regarding this collection contact Judith Kari at 410–786–6829).

2. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Information

Collection Requirements for Compliance with Individual and Group Market Reforms under Title XXVII of the Public Health Service Act; *Use:* Sections 2723 and 2761 of the Public Health Service Act (PHS Act) direct the Centers for Medicare and Medicaid Services (CMS) to enforce a provision (or provisions) of title XXVII of the PHS Act (including the implementing regulations in parts 144, 146, 147, and 148 of title 45 of the Code of Federal Regulations) with respect to health insurance issuers when a state has notified CMS that it has not enacted legislation to enforce or that it is not otherwise enforcing a provision (or provisions) of the group and individual market reforms with respect to health insurance issuers, or when CMS has determined that a state is not substantially enforcing one or more of those provisions. This collection of information includes requirements that are necessary for CMS to conduct compliance review activities. *Form Number:* CMS–10430 (OMB Control Number: 0938–0702); *Frequency:* Annually; *Affected Public:* Private Sector, State or local governments; *Number of Respondents:* 983; *Number of Responses:* 100,759; *Total Annual Hours:* 2,555. (For policy questions regarding this collection, contact Russell Tipps at (301) 492–4371).

Dated: February 25, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–04462 Filed 2–29–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: The National Directory of New Hires (NDNH) is a centralized directory maintained by the Federal Office of Child Support Enforcement. The information maintained in the NDNH is collected electronically and used to help child support agencies in locating parents and enforcing child support orders. Also, Congress authorized specific State and Federal agencies to receive NDNH information for authorized purposes to assist in administering certain programs. The NDNH is authorized under 42 U.S.C. 653(i)(1).

The information collection activities pertaining to the NDNH are authorized by:

(1) 42 U.S.C. 653A(b)(1)(A) and (B), requiring employers to report all newly-hired employees to the State Directory of New Hires (SDNH);

(2) 42 U.S.C. 653A(g)(2)(A), requiring every SDNH to transmit the new hire information to the NDNH within three business days of the data being entered in the SDNH;

(3) 26 U.S.C. 3304(a)(16)(B), requiring the reporting of wage and unemployment compensation information contained in the records of agencies administering the State program under part A of title IV of the Social Security Act; and

(4) Requiring the quarterly reporting of wages and other compensation under—

- 42 U.S.C. 653A(g)(2)(B), by every SDNH; and
- 42 U.S.C. 503(h)(1)(A), by State agencies administering the State's unemployment laws.

Respondents: Employers, State IV–A Agencies, State Child Support Agencies, and State Workforce Agencies.

Respondents

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,130,348	1.40	.025 hours (1.5 minute)	179,562.18
New Hire: Employers Reporting Electronically	595,812	88.62	.00028 hours (1 second)	14,784.24
New Hire: States	54	133,333.33	.016667 hours (1 minute)	120,002.40
QW & UI	53	26.00	.00028 hours (1 second)	0.39
Multistate Employer Form	5,127	1.00	.050 hours (3 minutes)	256.35
Estimate Total Annual Burden Hours				314,606

Estimated Total Annual Burden Hours: 314,606 hours.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–04410 Filed 2–29–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0567]

Pediatric Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pediatric Advisory Committee. This meeting was announced in the **Federal Register** of February 19, 2016. The amendment is being made to reflect a

change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, email: *marieann.brill@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 2016 (81 FR 8508), FDA announced that a meeting of the Pediatric Advisory Committee would be held on April 12, 2016. On page 8508, in the first column, the *Location* portion of the document is changed to read as follows:

DoubleTree by Hilton Hotel Bethesda-Washington DC, 8120 Wisconsin Ave., Bethesda, MD 20814, 301–652–2000. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-hotel-bethesda-washington-dc-WASBHDT/index.html.*

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: February 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04360 Filed 2–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–1234]

Determination of Regulatory Review Period for Purposes of Patent Extension; INVOKANA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for INVOKANA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by May 2, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 29, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–1234 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; INVOKANA''. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product INVOKANA (canagliflozin). INVOKANA is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for INVOKANA (U.S. Patent No. 8,222,219) from Mitsubishi Tanabe Pharma Corporation of Osaka, Japan, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of INVOKANA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for INVOKANA is 2,137 days. Of this time, 1,834 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 25, 2007. FDA has verified the Mitsubishi Tanabe Pharma Corporation of Osaka, Japan claim that May 25, 2007, is the date the investigational new drug application became effective

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 31, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for INVOKANA (NDA 204042) was initially submitted on May 31, 2012.

3. *The date the application was approved:* March 29, 2013. FDA has verified the applicant's claim that NDA 204042 was approved on March 29, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 256 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04369 Filed 2–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2371]

Determination of Regulatory Review Period for Purposes of Patent Extension; ANORO ELLIPTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ANORO ELLIPTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by May 2, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 29, 2016. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions)*: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–E–2371 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ANORO ELLIPTA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product ANORO ELLIPTA (umeclidinium/vilanterol). ANORO ELLIPTA is indicated for the long-term, once-daily, maintenance treatment of airflow obstruction in patients with chronic obstructive pulmonary disease. Subsequent to this approval, the USPTO received a patent term restoration application for ANORO ELLIPTA (U.S. Patent No. 7,488,827) from Glaxo Group Limited, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 19, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ANORO ELLIPTA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ANORO ELLIPTA is 1,589 days. Of this time, 1,223 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 14, 2009. The applicant claims August 13, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 14, 2009, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 18, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for ANORO ELLIPTA (NDA 203975) was initially submitted on December 18, 2012.

3. *The date the application was approved:* December 18, 2013. FDA has verified the applicant's claim that NDA 203975 was approved on December 18, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 966 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04370 Filed 2–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0811]

Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation To Treat Clostridium difficile Infection Not Responsive to Standard Therapies; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies; Draft Guidance for Industry.'' The draft guidance document provides members of the medical and scientific community and other interested persons with notice that, when finalized, we intend to exercise enforcement discretion under limited conditions, regarding the investigational new drug (IND) requirements for the use of fecal microbiota for transplantation (FMT) to treat *C. difficile* infection not responding to standard therapies. The draft guidance replaces the draft guidance of the same title dated March 2014 and, when finalized, is intended to supersede the document of the same title, dated July 2013.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Since your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0811 for ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies, total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments, and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments

received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gretchen Opper, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies.'' The draft guidance document provides members of the medical and scientific community and other interested persons with notice that, when finalized, we intend to exercise enforcement discretion under limited conditions, regarding the IND requirements for the use of FMT to treat *C. difficile* infection not responding to standard therapies. FDA intends to exercise this discretion, provided that: (1) The licensed health care provider treating the patient obtains adequate consent from the patient or his or her legally authorized representative for the use of FMT products. The consent should include, at a minimum, a statement that the use of FMT products to treat *C. difficile* is investigational and a discussion of its reasonably foreseeable risks; (2) the FMT product is not obtained from a stool bank; and (3) the stool donor and stool are qualified by screening and testing performed under the direction of the licensed health care provider for the purpose of providing the FMT product for treatment of the patient.

FDA has developed this policy to assure that patients with *C. difficile* infection not responding to standard therapies may have access to this treatment, while addressing and controlling the risks that centralized manufacturing in stool banks presents to subjects. FDA intends for this to be an interim policy, while the Agency develops a comprehensive approach for the study and use of FMT products under IND.

A stool bank is defined, for the purpose of this guidance, as an establishment that collects, prepares, and stores FMT product for distribution to other establishments, health care providers, or other entities for use in patient therapy or clinical research. An establishment that collects or prepares FMT products solely under the direction of licensed health care providers for the purpose of treating their patients (*e.g.,* a hospital laboratory) is not considered to be a stool bank under this guidance.

In the draft guidance, FDA provides that the stool bank sponsor may request a waiver of certain IND regulations relating to the obligations of investigators and subinvestigators (*e.g.,* certain sections of the Statement of Investigator Form FDA 1572 that may not be applicable to FMT provided to the health care provider to treat their patients) (21 CFR 312.10). FDA is requesting comments on which IND regulations are appropriate to waive. In particular, FDA is requesting comments on the requirement for institutional review board review of the use of FMT to treat patients with *C. difficile* infection not responding to standard therapies when the FMT is provided by a stool bank (21 CFR 312.23(a)(1)(iv) and 21 CFR 312.66).

In the draft guidance, FDA proposes a revised policy with regard to patient access to FMT. The provision that the donor be known either to the patient or to the treating licensed health care provider, a concept that was used in the March 2014 draft guidance, was subject to difficulties in interpretation, and the revised approach more accurately reflects our intent to mitigate risk, based on the number of patients exposed to a particular donor or manufacturing practice rather than the risk inherent from any one donor. Although FDA acknowledges that directed donations present different risks than stool bank donations, the number of persons exposed through a directed donation will be limited. FDA also requests comments on this revised policy. The draft guidance replaces the draft guidance of the same title, dated March 2014 and, when finalized, is intended to supersede the document of the same title, dated July 2013.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat *Clostridium difficile* Infection Not Responsive to Standard Therapies.'' 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. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 50 have been approved under OMB control number 0910–0755.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–04372 Filed 2–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Battelle Laboratories—King Avenue site in

Columbus, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On February 18, 2016, as provided for under 42 U.S.C. 7384*l*(14)(C),the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the facility owned by the Battelle Laboratories at the King Avenue site in Columbus, Ohio, during the period from July 1, 1956, through December 31, 1970, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on March 19, 2016, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–04415 Filed 2–29–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Information on Updates to the ONC Voluntary Personal Health Record Model Privacy Notice

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

ACTION: Notice with comment; request for information.

SUMMARY: The Office of the National Coordinator for Health Information Technology (ONC) seeks comments on the scope and content of the voluntary Personal Health Record Model Privacy Notice (MPN) developed by ONC and published in 2011. In response to stakeholder requests for an electronic means to inform consumers about how health technology products store, use, and share health information (especially products of health technology developers not covered by the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191), we have initiated a process to update the MPN to better align with the current consumer health technology landscape.

DATES: To be assured consideration, electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on April 15, 2016.

ADDRESSES: You may submit comments, identified by MPN RFI, by either of the following two methods (please do not submit duplicate comments).

- *ONC Web site:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word, Microsoft Excel, or Adobe PDF; however, we prefer Microsoft Word. *https://www.healthit.gov/policy-researchers-implementers/personal-health-record-phr-model-privacy-notice*.
- *Email: ONCMPN@hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Maya Uppaluru or Michael Lipinski, 202–690–7151.

SUPPLEMENTARY INFORMATION: In June 2008, the Office of the National Coordinator for Health Information Technology (ONC) began a multi-phase and iterative project to develop an easy-to-understand, voluntary Personal Health Record (PHR) Model Privacy Notice (MPN) that any PHR company could adopt to communicate its information practices to its users. Developed in collaboration with the Federal Trade Commission (FTC), the project's goals were two-fold: (1) Increase consumers' awareness of PHR companies' information practices; and (2) empower consumers by providing them with an easy way to compare the information practices of two or more PHR companies. The MPN was designed to enable PHR companies to easily enter their information practices and produce a notice to allow consumers to quickly learn and understand privacy and security policies and information practices, compare PHR company practices, and make informed decisions. Similar to the Food and Drug Administration's Nutrition Facts Label, this approach did not mandate specific policies, but rather was meant to encourage user-friendly transparency of a company's existing practices.

The MPN has two sections: (1) The ''Release'' section; and (2) the ''Secure'' section. Both sections of the MPN include model language that informs consumers about how a PHR company is using an individual's health information. The current MPN can be found here*, but we note that* it is no longer available for use. Additional background on the MPN can be found at: *https://www.healthit.gov/policy-researchers-implementers/personal-health-record-phr-model-privacy-notice.*

Since the development of the MPN, the consumer health technology landscape has greatly evolved. More consumers are now able to electronically access their health information than ever before. Not only are consumers interacting with their clinical and claims data (often collected and maintained by health care providers and health plans regulated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (*i.e.,* ''covered entities'')), but they are also interacting with fitness and wellness data from devices offered by health technology developers that may not be regulated by HIPAA. In general, HIPAA regulations govern how covered entities and their business associates maintain, access, use and disclose individually identifiable health information and protected health information, otherwise known as ''PHI''.[1] Specifically, the HIPAA regulations include requirements for: keeping information private in the Privacy Rule,[2] which also includes notifying individuals about how their PHI can be accessed, used, and disclosed; [3] adopting administrative, technical and physical safeguards to secure electronic PHI; [4] and mandating notice to affected individuals when a breach of PHI occurs.[5] Health technology developers that may not be covered by HIPAA are often called ''non-covered entities'' or ''NCEs.''

Health technology developers make available a diverse array of products, including mobile apps, wearable devices, and sensors, and often display notices of their privacy and information practices to consumers. These developers may be subject to other federal laws, including the FTC Act's prohibition on unfair or deceptive acts or practices,[6] and the FTC's Health

[1] 45 CFR 160.103.

[2] 45 CFR 164.501 *et seq.*

[3] 45 CFR 164.520; see also Office of Civil Rights Model Notices of Privacy Practices: *http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/model-notices-privacy-practices/.*

[4] 45 CFR 164.301 *et seq.*

[5] 45 CFR 164.400–414.

[6] 15 U.S.C. 45(a) (Section 5 of the FTC Act).

Breach Notification Rule [7] which requires notification to affected individuals when a breach of data occurs.

We are considering creating a new version of the MPN that would expand its scope beyond PHR companies and include more types of information practices. A modernized MPN would serve as a voluntary resource for health technology developers who want to give notice of their information practices to their users in an understandable way. Therefore, ONC requests public comment from consumers, mobile and web application developers, privacy advocates, user experience and design experts, and other health technology stakeholders on any updates that should be made to the content of the MPN to make it more useful to both health technology developers and consumers.

While we encourage comments on all aspects of the MPN, ONC specifically seeks comment on the topics specified below. We note that the MPN does not recommend best practices to health technology developers, and we do not seek recommendations about best practices. Rather, ONC seeks comment concerning what information practices health technology developers should disclose to consumers and what language should be used to describe those practices in an updated MPN. Examples of information practices below are included to clarify the intent of the questions, but are not intended to be exhaustive. ONC invites commenters to discuss any examples that are relevant to the broad issues of which types of personal information and information practices should be addressed in an updated MPN.

1. *User scope:* What types of health technology developers, including non-covered entities and potentially HIPAA-covered entities, could and should use an updated voluntary MPN?

2. *Information type:* What information types should be considered in and out of scope for the MPN? Examples could include, but are not limited to: Names, account access information, credit card numbers, IP address information, social security numbers, telephone numbers (cell and landline), GPS or geo-location data, data about how a consumer's body functions ranging from heart rate to menstrual cycle, genomic data, and exercise duration data such as number of steps or miles clocked.

3. *Information practices:* What types of practices involving the information types listed in Question 2 above should be included in the MPN? An information practice is what the company does with the data that it has collected. Types of practices that could be in scope for the MPN include, but are not limited to: Sale of data, including geo-location data; sale of anonymized or de-identified data, with or without restrictions on re-identification; sale of identifiable data; sale of statistics aggregated from identifiable data; use of data by the original collector to market products to the consumer; allowing third parties to use the data for marketing purposes; allowing government agencies to access the data, and for what purposes (such as law enforcement or public health); allowing researchers at academic and non-profit institutions to access either identifiable or de-identified data; access to the data by employers, schools, insurance companies or financial institutions with or without the consumer's consent; and retention or destruction of consumer data when the relationship between the health technology developer and consumer terminates.

4. *Sharing and storage:* What privacy and security issues are consumers most concerned about when their information is being collected, stored, or shared? Examples could include whether a health technology developer stores information in the cloud or on the consumer's device, or whether the information collected is accessed, used, disclosed, or stored in another country.

5. *Security and encryption:* What information should the MPN convey to the consumer regarding specific security practices, and what level of detail is appropriate for a consumer to understand? For example, a health technology developer could state that the product encrypts data at rest, or that it uses 128-bit or 256-bit encryption. How can information about various security practices, often technical in nature, be presented in a way that is understandable for the consumer? Examples could include encryption at rest or encryption in transit, or whether information is encrypted on the device or in the cloud.

6. *Access to other device information:* What types of information that an application is able to access on a consumer's smartphone or computer should be disclosed? How should this be conveyed in the MPN? Examples include a health application accessing the content of a consumer's text messages, emails, address books, photo libraries, and phone call information.

7. *Format:* How should the MPN describe practices about the format in which consumer information is stored or transmitted (*e.g.,* individually identifiable or de-identified, aggregate, or anonymized), particularly when their information is being shared with, or sold to, third parties? How should anonymized or de-identified information be defined for the purposes of the MPN? What existing definitions of ''anonymized'' or ''de-identified'' information are widely in use that could be potentially leveraged in conjunction with the MPN to clearly convey these practices to consumers? [8]

8. *Information portability:* How should the MPN describe to consumers whether an application enables the consumer to download or transmit their health information? How should the MPN describe the consumer's ability to retrieve or move their data when the relationship between the consumer and the health technology developer terminates? Examples include if a consumer ends their subscription to a particular health technology service, or when a health technology developer's product is discontinued.

ONC seeks broad input from stakeholders on updating the MPN so that the tool is useful for current health technology developers and consumers. Individuals and organizations with common interests are urged to both coordinate and consolidate their comments.

Authority: 42 U.S.C. 300jj–11; Office of the National Coordinator for Health Information Technology; Delegation of Authority (76 FR 58006, Sept. 19, 2011).

Dated: February 23, 2016.

Karen DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2016–04239 Filed 2–26–16; 4:15 pm]

BILLING CODE 4150–45–P

[7] 16 CFR part 318.

[8] See, *e.g.,* 45 CFR 164.514(a) (HIPAA Privacy Rule) as a potential standard for de-identification of protected health information.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Health IT Policy Committee and Health IT Standards Committee: Schedule and Recommendations

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice fulfills obligations under the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L.

111–5), which amended the Public Health Service Act (PHSA). Section 3003(b)(3) of the PHSA mandates that the Health IT Standards Committee (HITSC) develop an annual schedule for the assessment of policy recommendations developed by the Health IT Policy Committee (HITPC) and publish the schedule in the **Federal Register**. This notice fulfills the requirements of section 3003(b)(3) and updates the HITSC schedule posted in the **Federal Register** on August 10, 2015. This notice also meets the requirements under sections 3002(e) and 3003(e) for publication in the **Federal Register** of recommendations made by the HITPC and HITSC, respectively. Further, this notice serves to meet the requirements of section 3004(a)(3) for publication in the **Federal Register** of determinations by the Secretary of Health and Human Services regarding HITSC-recommended certification criteria endorsed by the National Coordinator for Health Information Technology.

FOR FURTHER INFORMATION CONTACT: Michael Lipinski, Office of Policy, Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION: This notice fulfills obligations under the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), which amended the Public Health Service Act (PHSA).

Health IT Standards Committee Schedule

Section 3003(b)(3) of the PHSA mandates that the Health IT Standards Committee (HITSC) develop an annual schedule for the assessment of policy recommendations developed by the Health IT Policy Committee (HITPC) and publish it in the **Federal Register**. The HITSC's schedule for the assessment of HITPC recommendations updates the HITSC schedule published on August 10, 2015, and is as follows:

The National Coordinator for Health Information Technology (National Coordinator) will establish priority areas based in part on recommendations received from the HITPC regarding health IT standards, implementation specifications, and/or certification criteria. Once the HITSC is informed of those priority areas, it will:

(A) Identify the best mechanism by which to organize itself in order to respond to the National Coordinator within 90 days with, at a minimum, the following:

(1) An assessment of what standards, implementation specifications, and certification criteria are currently available to meet the priority area;

(2) An assessment of where gaps exist (*i.e.,* no standard is available or harmonization is required because more than one standard exists) and identify potential organizations that have the capability to address those gaps; and

(3) A timeline, which may also account for the National Institute of Standards and Technology (NIST) testing, where appropriate, and include dates when the HITSC is expected to issue recommendations to the National Coordinator.

(B) In responding to the National Coordinator:

(1) Approve a timeline by which it will deliver recommendations to the National Coordinator; and

(2) Determine whether to establish a task force to conduct research and solicit testimony, where appropriate, and issue recommendations to the full committee in a timely manner.

(C) Advise the National Coordinator, consistent with the accepted timeline in (B)(1) and after NIST testing, where appropriate, on standards, implementation specifications, and/or certification criteria, for the National Coordinator's review and determination whether or not to endorse the recommendations, and possible adoption of the proposed recommendations by the Secretary of the Department of Health and Human Services (Secretary).

The standards and related topics which the HITSC is expected to address in 2016 include, but may not be limited to: Quality measurement; precision medicine; security; consumer-mediated information exchange; public health; technical interoperability experience in the field; and updates to the Office of the National Coordinator for Health Information Technology (ONC)'s Interoperability Standards Advisory(ies).

HITPC and HITSC Recommendations

Sections 3002(e) and 3003(e) of the PHSA provides for publication of HITPC and HITSC recommendations in the **Federal Register**. ONC will post all recommendations received from the HITPC on its Web site at: *https://www.healthit.gov/facas/health-it-policy-committee/health-it-policy-committee-recommendations-national-coordinator-health-it.* ONC will post all recommendations received from the HITSC on its Web site at: *https://www.healthit.gov/facas/health-it-standards-committee/health-it-standards-committee-recommendations-national-coordinator.* All prior recommendations received from the HITPC and HITSC can be found at these respective Web site addresses.

HITSC Privacy and Security Recommendations

Section 3004(a)(3) of the PHSA provides for publication in the **Federal Register** of determinations by the Secretary regarding HITSC-recommended certification criteria endorsed by the National Coordinator.

On March 30, 2015, ONC issued a notice of proposed rulemaking with comment period for the 2015 Edition health IT certification criteria (80 FR 16804). Subsequently, on June 5, 2015, the HITSC submitted a transmittal letter to the National Coordinator which contained the HITSC recommendations for the adoption of two new certification criteria for the ONC Health IT Certification Program. The two certification criteria are:

1. A criterion for encrypting authentication credentials; and

2. A multi-factor authentication criterion for user access to health information.

The National Coordinator endorsed these recommendations for consideration by the Secretary and the Secretary has determined that it is appropriate to propose adoption of these two new certification criteria through rulemaking. Therefore, the Secretary, within a reasonable period of time, will propose adoption of the certification criteria noted above in an available and appropriate notice of proposed rulemaking.

Authority: 42 U.S.C. 300jj–11–14; Office of the National Coordinator for Health Information Technology; Delegation of Authority (74 FR 64086, Dec. 7, 2009).

Dated: February 23, 2016.

Karen DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2016–04238 Filed 2–26–16; 4:15 pm]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel—ENRGISE.

Date: March 29, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, The Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 24, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–04365 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of FI2 Applications: Postdoctoral Research Associate (PRAT) Program.

Date: March 23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 24, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–04366 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: April 17–18, 2016.

Time: 6:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheldon S Miller, Ph.D., Scientific Director, National Institutes of Health, National Eye Institute, Bethedsa, MD 20892, (301) 451–6763.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 25, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–04447 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group—Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 30–31, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Brenda L. Fredericksen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G22A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5052, *brenda.fredericksen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–04361 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; The Study of Center of Global Health's (CGH) Workshops (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sudha Sivaram, Program Director, Center for Global Health, 9609 Medical Center Drive, RM 3W528 Rockville, MD, 20850 or call non-toll-free number (240) 276–5810 or Email your request, including your address to: *sudha.sivaram@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: The Study of the Center of Global Health's (CGH) Workshops (NCI), 0925–0722, Expiration Date 06/30/2018, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this study is to collect stakeholder feedback from past and future workshops; to assess the effectiveness of the Center of Global Health (CGH) workshops, which seek to assess abilities of the workshop attendees and respective countries to implement national cancer control programs; inform content and improve delivery of future workshops, and to systematically assess CGH's contribution. The workshops to be studied are the Symposiums on Global Cancer Research, Workshops in Cancer Control Planning and Implementation, the Summer Curriculum in Cancer Prevention, Women's Cancer Program Summit, Regional Grant Writing and Peer Review Workshops, and Workshops on Tobacco Control. While these workshops differ in content and delivery style, their underlying goals are the same; they intend to initiate and enhance cancer control efforts, increase capacity for cancer research, foster new partnerships, and create research and cancer control networks. The proposed study requests information about the outcomes of each of these workshops including (1) new cancer research partnerships and networks (2) cancer control partnerships and networks, (3) effects on cancer research, and (4) effect on cancer control planning and implementation efforts. Information will be collected in two phases where Phase 1 will collect information from attendees of past workshops (1998–2015) and Phase 2 will collect information from attendees of future workshops over the next three years. The surveys will enable CGH to better understand the impact the workshops have had on their partnerships and networks, research, and cancer control planning and implementation efforts.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 941.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Chief Executives, Medical Scientists, Health Educators, Family/General Practitioners, Registered Nurses, Medical and Health Services Managers.	Phase 1: Symposium on Global Cancer Research.	500	1	20/60	167
	Phase 2: Symposium on Global Cancer Research.	250	1	20/60	84
	Phase 1: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 2: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 1: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23
	Phase 2: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23
	Phase 1: Summer Curriculum in Cancer Prevention (Attach 3D).	500	1	30/60	250

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
	Phase 2: Summer Curriculum in Cancer Prevention.	27	1	30/60	14
	Phase 1: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 2: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 1: Regional Grant Writing and Peer Review Workshop.	150	1	30/60	75
	Phase 2: Regional Grant Writing and Peer Review Workshop.	60	1	30/60	30
	Phase 1: Workshops on Tobacco Control.	180	1	30/60	90
	Phase 2: Workshops on Tobacco Control.	90	1	30/60	45
Totals		2,317	2,317		941

Dated: February 10, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–04363 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–189: Imaging and Biomarkers for Early Cancer Detection.

Date: March 22, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chiayeng Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 5213, MSC 7852, Bethesda, MD 20892, 301–435–2397, *chiayeng.wang@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: February 25, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–04446 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; iWin: Navigating Your Path to Well-Being

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments And For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Belinda Sims, Health Scientist, DESPR, PRB, NIDA, NIH, 6001 Executive Boulevard, Room 5153, Bethesda, Maryland 20892, or call non-toll-free number (301) 402–1533, or Email your request, including your address to: *bsims@nida.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: iWin: Navigating your Path to Well-Being, 0925–NEW, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The overarching objective of this proposal is to conduct a

randomized trial to evaluate the effectiveness of the Individual Well-Being Navigator (iWin) mobile application, a substance abuse prevention and well-being enhancement program designed specifically for military personnel. This mobile application provides an innovative, tailored mobile application using best practices in behavior change science and innovative technology to assist military personnel in preventing substance abuse and enhancing well-being by providing them with the most appropriate intervention content at the right time. It integrates Trans-theoretical Model of Behavior Change based tailoring, SMS messaging, stage of change matched activities, and engaging game-like features in a cutting edge multiple behavior change program. The first year of this project will focus on the completion of development and beta testing of the app. In year 2, the efficacy of the iWin program will be determined by tests of statistical significance indicating that participants in the Treatment condition had lower scores on an index of substance use and other behavioral risks than the control group at 6 and 9 month follow-up. The overall design is a 2 group (treatment and control group) by 3 Occasions with repeated measures across occasions. Once shown to be effective, the iWin program will assist organizations that serve military personnel to meet the directives of both the Department of Defense and the Chairman of the Joint Chiefs of Staff indicating that prevention programs be evidence based, evaluated by the specified populations and address full Total Force Fitness paradigm rather than a single behavior.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,557.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Screening	Military Personnel	1,624	1	10/60	271
Baseline	Military Personnel	812	1	30/60	406
Follow-up Outcome Assessments (6 and 9 month).	Military Personnel	812	2	30/60	812
Consent Form	Military Personnel	821	1	5/60	68

Dated: February 19, 2016.

Genevieve R. deAlmeida,

Project Clearance Liaison, NIDA, NIH.

[FR Doc. 2016–04364 Filed 2–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences

Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)
Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)
Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)
Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917
DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890
Dynacare ,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609
Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)
Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Summer King,

Statistician.

[FR Doc. 2016–04408 Filed 2–29–16; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Community Support Evaluation (CSE)—New

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), is requesting clearance for the new data collection associated with the CSE. The CSE is a multicomponent evaluation of two SAMHSA programs—Behavioral Health Treatment Court Collaborative (BHTCC) and Transforming Lives through Supported Employment (SE). SE intends to promote recovery for individuals with serious mental illness, substance use, and co-occurring mental and substance use disorders. The programs are rooted in the belief that recovery is a holistic process bolstered by trauma-informed care and individual- and community-level support.

The purpose of the CSE is to (1) describe and assess BHTCC and SE

grantee activities and procedures, including the intermediate or direct effects of the programs on participants; (2) document the application and sanctioned adaptations of BHTCC programs in the justice system and of the SE Program; and (3) design and implement plans to disseminate knowledge about how to replicate effective projects in other States, territories, tribal nations, and communities. Findings will inform current grantees, policymakers, and the field about ways to transform the behavioral health system to cultivate resiliency and recovery, actively collaborate with and engage, and improve service delivery for individuals with serious mental, substance, and co-occurring disorders who are in recovery.

Eight data collection activities compose the CSE—five for administration with BHTCC program grantees and three to be conducted with SE program grantees.

BHTCC Study Instruments

Biannual Program Inventory (BPI)–BHTCC: The BPI–BHTCC is a Web-based survey that will capture infrastructure development and direct services that are part of the BHTCC programs. Data include the types of planning, infrastructure, and collaboration grantees are implementing; trainings conducted; and direct services offered as part of the program. The BPI will be completed by grantee evaluation staff twice yearly (April and October) over the grant period.

System-Level Assessment (SLA) Key Informant Interviews (KIIs): The SLA KIIs will be conducted with five stakeholders from each BHTCC grantee to assess collaboration strategies to expand or better serve participants; processes for recruiting, screening, and retaining participants; practices to ensure treatment adherence and criminal justice compliance; and involvement of consumers in program planning and implementation. Data include implementation processes/outcomes; service infrastructure, capacity, entry, and delivery processes; management structure; reward and sanction models; trauma-informed practices; collaboration among BHTCC participants; and facilitators and barriers to collaboration. There are three versions of the SLA KIIs: (1) Court personnel (administrators, coordinators, judges, attorneys), (2) service provider (case managers, BHTCC peer specialists), and (3) consumer (clients, family members). Grantee staff will assist with respondent recruitment by collecting consent to contact from potential participants and forwarding the forms to the CSE team. The SLA KIIs will be conducted in grant years two and four via telephone or Skype. The SLA KIIs will cover the same information across years; however, the Year 4 SLA KIIs also will ask for specific plans for future implementation.

Concept Mapping: A total of four concept mapping exercises will be conducted—one local and three cross-site concept maps will be created. All concept mapping exercises will be coordinated at the local level with assistance from the CSE team. Beginning in Year two, each grantee will identify and recruit up to 20 stakeholders (BHTCC peers, consumers, family members of consumers, and court personnel) to participate in the first exercise. Concept mapping will be conducted via a Web-based program; accommodations will be made for respondents who do not have access to computers via telephone or paper/pencil.

- *Exercise 1—Local Concept Maps:* Between Years two and three, each BHTCC grantee will generate a local concept map identifying the priority supports for recovery. The exercise will take place in two parts. First, participants will be asked to brainstorm as many responses as they wish to a focus prompt about system-level change (*e.g., one way that this BHTCC collaborative provides support to consumers is . . .*). At a later date, local staff will ask participants to sort and rate the full list of responses from the brainstorming activity in ''any way that makes sense'' to them. Respondents will sort/rate the responses—once for importance and once for frequency—into groups and name them. The resulting information will be entered into Concept System software to generate a local map identifying the most important aspects of the grantee program that support recovery.
- *Exercise 2—Keys to Recovery (KTR) Map 1:* In Year four, up to 20 stakeholders from each BHTCC grantees will participate in a second sorting/rating of local concept mapping information. Grantee staff will develop a list of the most common brainstormed responses to the original local concept mapping exercise. The information will be used to generate a cross-site map on the basis of input from the 17 BHTCC sites.
- *Exercises 3 and 4—Keys to Recovery Maps 2 and 3:* In Year four, two groups of up to five BHTCC grantees with a particular court structure or program focus (*e.g.,* veterans' court and other BHTCC types of court models, such as key recovery supports addressing a specific aspect or type of severe mental illness) will participate in two concept mapping exercises to generate KTR maps. The program focus will be determined after the initial site-specific maps have been analyzed. Up to 20 stakeholders from each participating grantee will engage in brainstorming and sorting/rating activities. Respondents will participate via Web, telephone, or paper/pencil.

18-Month Client Level Abstraction Tool: the 18-Month Tool is an Excel-based tool that collects existing data on long-term client outcomes on recidivism. Data include (1) rearrest dates (from the National Crime Information Center database), (2) recommitment dates (from State departments of corrections and local/county jails and corrections), (3) revocation dates (from State and local corrections), and (4) risk assessment quantitative score. Grantee staff will complete the tool at 18 months from the baseline period for any client enrolled in the BHTCC program. Beginning in year two, grantees will upload all extracted data on a quarterly basis. In their final upload (last month of grant activity), grantees will include data for all clients not currently submitted including those enrolled less than 18 months. The 18-Month Tool will be completed by BHTCC grantee evaluation staff using existing sources. In addition, court staff (*e.g.,* court clerks) from two BHTCC comparison courts will complete the tool for non-BHTCC participants as part of a comparison study.

Comparison Study Client Level Abstraction Tool: the Comparison Study Tool is an Excel-based tool that collects existing data on comparison cases (individuals who are not participating in the BHTCC program but are comparable in program eligibility) at baseline and six months. Baseline data include demographics and status of screening for co-occurring disorders, employment, and probation/parole. Data abstracted through the six-month tool include employment status, probation/parole status, services received (*e.g.,* case management, treatment, medical care, after care, peer-to-peer recovery support, and education) and number of days services were received. Respondents will include court staff (*e.g.,* court clerks) at comparison courts who have regular interaction with clients during their involvement in the justice system. Respondents will complete the tool on the basis of (1) court paperwork and (2) information discussed during regular court-related interactions.

SE Study Instruments

Biannual Program Inventory—SE: The BPI–SE is a Web-based survey that captures the infrastructure development and direct services that are part of the SE programs. Data include the types of planning that SE grantees and local implementation sites are implementing and activities and infrastructure developed as part of the project. The BPI is administered twice yearly (April and October) over the grant period and will be completed by SE grantee program staff.

Scalability/Sustainability Assessment (SSA) KIIs: The SSA KIIs will be conducted with various stakeholders to assess local SE program resources, infrastructure, outcomes, sustainability, and scalability from stakeholders. Data include changes in outcomes, workforce development, State-level collaboration, partnerships and policies, and scalability and sustainability. There are two versions of the SSA KIIs—each is tailored to the intended audience: (1) State-level administrator (project directors, agency directors, SECC members) and (2) local, pilot-level service provider (local service provider). The SSA KIIs will be conducted remotely by telephone and/or Skype technology in years two and four of the evaluation with five stakeholders from each SE grantee. The KIIs cover the same information across years; however, Year four KIIs will follow up on how the infrastructure and activities taking place in Year two come to fruition.

Employment Needs Focus Groups (FGs): The employment needs FGs will be conducted to gather information about the needs and experiences of employment specialists, consumers, and employers as they relate to supported employment principles and program goals. Data include local program implementation, the adoption of policies and practices for sustainability and scalability, and recommendations for program improvement and implementation best practices. Employment Needs FGs will be conducted with employment specialists and employers (who have and have not participated in the program) virtually using a Web-based platform (such as JoinMe) in years two and four of grant funding. Specific topics are tailored to respondent type.

- *Employment specialists* will discuss training received and techniques used to engage employers, the needs and experiences of clients and employers, facilitators and barriers to program implementation, and program scalability and sustainability. The employment specialist FG will take 90 minutes.
- *Employers* (*e.g.,* hiring managers, supervisors) will discuss experiences and satisfaction with the program, factors that facilitate and pose barriers to their participation, and program scalability and sustainability. The employer FG will take 60 minutes.

The estimated response burden to collect this information associated with the CSE is as follows, annualized over the requested three-year clearance period, as presented below:

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES, AND HOURS

Instrument	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)*
BHTCC Study Instruments					
Biannual Program Inventory—BHTCC	17	2	34	0.75	26
System Level Assessment KIIs	58	1	58	1	58
18-Month Abstraction Tool	19	1	19	5.40	102.6
Comparison Study Abstraction Tool (BL)	2	1	2	7	14
Comparison Study Tool (6 Mo)	2	1	2	7	14
Concept Mapping Brainstorm/Sort/Rate	180	1	180	1	180
Concept Mapping Sort/Rate	115	1	115	0.5	58
SE Study Instruments					
Biannual Program Inventory—SE	7	2	14	0.75	11
Sustainability/Scalability KIIs	28	1	28	1	28
Employer FG	28	1	28	1	28
Employment Specialist FG	28	1	28	1.5	42
Total	467		508		562

* Rounded to the nearest whole number.

Written comments and recommendations concerning the proposed information collection should be sent by March 31, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

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[FR Doc. 2016–04418 Filed 2–29–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C.

chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program, Cohorts IV and V—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) requests OMB approval to collect community outcomes data for the cross-site evaluation of the Strategic Prevention Framework State Incentive Grant (SPF SIG) program, Cohorts IV and V. CSAP has previously funded two cross-site evaluations of the Strategic Prevention Framework State Incentive Grant (SPF SIG), one focused on Cohorts I and II and the other on Cohorts III, IV, and V. Collectively, these evaluations provide an important opportunity to inform the prevention field on current practices and their association with community- and state-level outcomes.

Data are collected at the grantee, community, and participant levels. The collection of community outcomes data is the focus of the current request. The primary cross-site evaluation objective is to determine the impact of SPF SIG on building prevention capacity and infrastructure, and preventing the onset and reducing the progression of substance abuse, as measured by the SAMHSA National Outcome Measures (NOMs).

The SPF SIG grant program is a major investment by the federal government to improve substance abuse prevention systems and enhance the quality of prevention programs, primarily through the implementation of the SPF process. The goal of this initiative is to provide states, jurisdictions, tribal entities, and the communities within them with the tools necessary to develop an effective prevention system with attention to the processes, directions, goals, expectations, and accountabilities necessary for functionality. SAMHSA/CSAP needs to collect information over the course of the remaining grant period to monitor the progress of the SPF SIG initiative. CSAP will use the findings from the analysis of the community outcomes data in the cross-site evaluation to assess the impact of SPF activities on community-level outcomes.

ANNUALIZED DATA COLLECTION BURDEN

Instrument	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours
Community Outcomes Module	34	1	34	4	136

Written comments and recommendations concerning the proposed information collection should be sent by March 31, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–04420 Filed 2–29–16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Now Is the Time (NITT)—Minority Fellowship Program (MFP) Evaluation—New

SAMHSA is conducting a national evaluation of the Now is the Time (NITT) initiative, which includes separate programs—the Minority Fellowship Program—Youth (MFP–Y), the Minority Fellowship Program—Addiction Counselors (MFP–AC), Project AWARE (Advancing Wellness and Resilience in Education)—State Educational Agency, and Healthy Transitions. These programs are united by their focus on capacity building, system change, and workforce development.

The NITT–MFP (Youth and Addiction Counselors) programs, which are the focus of this data collection, represent a response to the fourth component of President Obama's NITT Initiative: Increasing access to mental health/behavioral health services. The purpose of the NITT–MFP programs is to improve behavioral health care outcomes for underserved racially and ethnically diverse populations by increasing the number of culturally competent master's level behavioral health professionals and addiction counselors serving children, adolescents, and populations in transition to adulthood (ages 16–25) in an effort to increase access to, and quality of, behavioral health care for these age groups. The NITT–MFP—Youth program funded five grantees to each support up to 48 master's level fellows per year committed to addressing the behavioral health needs of at risk children, adolescents, and transition-age youth (ages 16–25). The NITT–MFP—Addiction Counselors program funded two grantees to each support up to 30 master's level fellows per year in their final year of addiction counseling university programs, with a focus on providing culturally sensitive addiction counseling to underserved youth in the 16–25 age group.

The NITT–MFP evaluation is designed to assess the level of success of the grantees in meeting the programs' goals and identify the factors that contribute to differences among grantees in levels of success. The evaluation includes both process and outcome evaluation components and will be supported by the data collection efforts described below. The information to be

collected is necessary to (a) assess the effectiveness of the grantees' program recruitment strategies, (b) describe the services that the programs offer, and (c) assess whether NITT–MFP is meeting its goal of increasing the skilled workforce by increasing the number of behavioral health providers and addiction counselors providing services to underserved children, adolescents, and transition-age youth, particularly among racially/ethnically diverse populations.

About 4 to 5 months after completion of their fellowship, a subset of fellow alumni will be asked to participate in the *NITT–MFP Fellow Interview.* These telephone interviews will collect detailed qualitative information on fellows' experiences that are not possible to collect in a survey. The interview is timed to collect fellows' impressions of their fellowship experiences before too much time has passed, as well as their initial labor market outcomes. The information collected will be used to assess the NITT–MFP program factors associated with employment and other post-fellowship outcomes. The interviewees will be asked to describe (1) their program, how they learned about it, and what led them to apply; (2) the effects of the program on their interest in working with at risk children, adolescents, and transition age youth from racially and ethnically diverse backgrounds (and for MFP–AC fellows, in the area of addiction counseling); (3) whether the program improved their understanding of and ability to provide culturally competent services; (4) whether they completed their fellowship and the effects of the stipend on their education and career; (5) their current employment setting, and, if in behavior health services, the characteristics of their client population; (6) the role that their fellowship played in their job interests and job search; and (7) their satisfaction with the fellowship program and assessment of its impact on their career and professional activities. A maximum of 66 fellow alumni are expected to complete the *NITT–MFP Fellow Interview* per year; respondents will complete the telephone interview one time.

ANNUALIZED BURDEN HOURS

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
NITT–MFP Fellow Interview	66	1	66	1	66

Written comments and recommendations concerning the proposed information collection should be sent by March 31, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–04419 Filed 2–29–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1558]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 31, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1558, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 22, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. NON-WATERSHED-BASED STUDIES

Community	Community map repository address
Washington County, Indiana and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–05–2057S Preliminary Date: June 1, 2012	
City of Salem	Salem City Hall, Department of Building and Safety, Suite 104, 201 East Market Street, Salem, IN 47167.
Town of Little York	Washington County Building Department, 600 Anson Street, Salem, IN 47167.
Town of New Pekin	Pekin Town Hall, 75 South Mill Street, Pekin, IN 47165.
Unincorporated Areas of Washington County	Washington County Building Department, 600 Anson Street, Salem, IN 47167.
Whatcom County, Washington and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 13–10–0343S Preliminary Date: September 30, 2015	
City of Bellingham	City Hall, 210 Lottie Street, Bellingham, WA 98225.
City of Blaine	City Hall, 435 Martin Street, Suite 3000, Blaine, WA 98230.
City of Ferndale	Planning and Public Works Department, 2095 Main Street, Ferndale, WA 98248.
City of Lynden	City Hall, 300 4th Street, Lynden, WA 98264.
City of Nooksack	City Hall, 103 West Madison Street, Nooksack, WA 98276.
Lummi Indian Reservation	Lummi Nation Natural Resources Department, 2665 Kwina Road, Bellingham, WA 98226.
Unincorporated Areas of Whatcom County	Public Works/River and Flood Division, 322 North Commercial Street, Suite 120, Bellingham, WA 98225.

[FR Doc. 2016–04430 Filed 2–29–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0061]

Agency Information Collection Activities: Application for Regional Center Under the Immigrant Investor Pilot Program and Supplement, Form I–924 and I–924A; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on December 18, 2015, at 80 FR 79069, allowing for a 60-day public comment period. USCIS did receive three comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 31, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number [1615–0061].

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0046 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program and Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–924 and Form I–924A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals representing any economic unit, public or private, in the United States that is involved with promoting economic growth. This collection will be used by such individuals to ask USCIS to be designated as a regional center under the Immigrant Investor Program, to request an amendment to a previously approved regional center designation, or to demonstrate continued eligibility for designation as a regional center under the Immigrant Investor Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–924 is 400 and the estimated hour burden per response is 40 hours; the estimated total number of respondents for the information collection for Form I–924A is 882 and the estimated hour burden per response is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 18,646 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $592,756.

Dated: February 18, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–04375 Filed 2–29–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–02]

60-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, 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:* May 2, 2016.

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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Elements for the Annual MTW Plan and Annual MTW Report.

OMB Approval Number: 2577–0216.

Type of Request: Revision to currently approved collection.

Form Number: 50900.

Description of the need for the information and proposed use: All Public Housing Authorities (PHAs) are required to submit a five (5) Year Plan and Annual Plans as stated in Section 5A of the 1937 Act, as amended; however, for PHAs with specific types of Moving to Work (MTW) demonstration agreements (39 at the time of submission of this request) the Annual MTW Plan and Annual MTW Reports are submitted in lieu of the standard annual and 5 year PHA plans.

The MTW Demonstration was authorized under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat 1321), dated April 26, 1996. The original MTW Demonstration statute permitted up to 30 PHAs to participate in the demonstration program. Nineteen PHAs were selected for participation in the MTW demonstration in response to a HUD Notice published in the **Federal Register** on December 18, 1996 and five of the 30 slots were filled through the Jobs-Plus Community Response Initiative.

Additional MTW 'slots' have been added by Congress over time through appropriations statutes. Two PHAs were specifically named and authorized to join the demonstration in 1999 under the VA, HUD, and Independent Agencies Appropriations Act of 1999 (Pub. L. 105–276, 112 Stat. 2461), dated October 21, 1998. A Public and Indian Housing Notice (PIH Notice 2000–52) issued December 13, 2000, allowed up to an additional 6 PHAs to participate in the MTW demonstration. The Consolidated Appropriations Act, 2008 (Pub. L. 110–161, 121 Stat. 1844) added four named PHAs to the Moving to Work demonstration program.

Subsequent appropriations acts for 2009, 2010, and 2011 authorized a total of 12 additional MTW slots. As part of HUD's 2009 budget appropriation (Section 236, title II, division I of the Omnibus Appropriations Act, 2009, enacted March 11, 2009), Congress directed HUD to add three agencies to the MTW program. As part of HUD's 2010 budget appropriation (Section 232, title II, division A of the Consolidated Appropriations Act, 2010, enacted December 16, 2009), Congress authorized HUD to add three agencies to the MTW demonstration. In 2011, Congress again authorized HUD to add three MTW PHAs pursuant to the 2010 Congressional requirements.

A Standard MTW Agreement (Standard Agreement) was developed in 2007, and was transmitted to the existing MTW agencies in January, 2008. As additional MTW PHAs were selected they too were provided with the Standard Agreement. All 39 existing MTW agencies operate under this agreement, which authorizes participation in the demonstration through each agency's 2018 fiscal year. HUD is currently working on an extension of the Standard Agreement to 2028, as required by the Consolidated Appropriations Act, 2016.

Under the Standard Agreement, all MTW sites are authorized to combine their operating, modernization and housing choice voucher funding into a single ''block'' grant. Because they cannot conform with the requirement for the regular PHA annual and 5 year plans, and because HUD requires different information from these PHAs for program oversight purposes, these sites are required to submit an annual MTW Plan and an annual MTW Report in accordance with their MTW Agreement, in lieu of the regular PHA annual and 5 year plans.

Through the MTW Annual Plan and Report, each MTW site will inform HUD, its residents and the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. The MTW Annual Plan, like the Annual PHA Plan, provides an easily identifiable source by which residents, participants in tenant-based programs, and other members of the public may locate policies, rules, and requirements concerning the PHA's operations, programs, and services. Revisions are being made to this 50900 form to improve its usability and to address minor issues identified by HUD and the MTW PHAs over time. Examples of these minor refinements include: Additional entries in the ''General Information'' section to improve clarity, elimination of the requirement to submit tables in multiple formats, layout improvements to sections/tables to improve readability, and text corrections to improve term consistency.

Respondents: The respondents to this PRA are the 39 Public Housing Authorities (PHAs) that currently have the MTW designation.

Estimated Number of Respondents: 39.

Estimated Number of Responses: 468.

There are 7 sections associated with this Form requiring response. All 7 sections are completed with the first annual submission (Plan), and 5 of the 7 are completed with the second annual submission (Report). This results in a total of 12 total responses per PHA, or 468 total responses per year across all 39 affected PHAs.

Frequency of Response: MTW PHAs complete requirements associated with this Form twice per year (Plan and Report). In the Plan, the PHA completes all 7 sections of the Form. In the Report, the PHA completes only 5 of the 7 sections of the Form.

Average Hours per Response: The estimated average burden is 40.5 hours per response (or 81 total hours per year).

Total Estimated Burdens: 4,680 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 23, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–04498 Filed 2–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–C–05]

60-Day Notice of Proposed Information Collection: Correction

The Multifamily Project Application and Construction Prior to Initial Endorsement OMB Control Number 2502–0029

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

ACTION: Correction; notice.

SUMMARY: This notice corrects the document HUD published at 81 FR 8215, February 18, 2016, correcting the number for: Estimated Number of Responses. 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.

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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Theodore.K.Toon@hud.gov* or telephone 202–402–1142. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Multifamily Project Application and Construction Prior to Initial Endorsement.

OMB Approval Number: 2502–0029.

Type of Request: Revision.

Form Number: HUD–92013, HUD–92013 Supp, HUD–92013–A, HUD–92013–B, HUD–92013–C, HUD–92013–D, HUD–92013–E, HUD–92264, HUD–92264–A, HUD–92273, HUD–92274, HUD–92326, HUD–92329, HUD–92331, HUD–92485, HUD–92415, HUD–92447, HUD–92452, HUD–92010, HUD–91708, HUD–2880, HUD–92466–R1, R2, R3, R4, HUD–92466 R5, HUD–92408, HUD–92466M, FM–1006, HUD–95379 and HUD–2

Description of the need for the information and proposed use: The Multifamily Project Applications and Construction Prior to Initial Endorsement is being revised to include two (2) supplemental forms that outline requirements of owners that elect to benefit from the simplified rate categories. These forms will be used during the processing of an application for a FHA insured mortgage to determine the appropriate mortgage insurance premium.

Respondents (*i.e.* affected public): 1,002.

Estimated Number of Respondents: 1,002.

Estimated Number of Responses: 229.

Frequency of Response: 1.

Average Hours per Response: 34,112.

Total Estimated Burden: 351,182.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: February 23, 2016.

Charles,

Senior Policy Advisory for Housing.

[FR Doc. 2016–04499 Filed 2–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–10]

30-Day Notice of Proposed Information Collection: Generic Customer Satisfaction Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* March 31, 2016.

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: HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 21, 2015 at 80 FR 79352.

A. Overview of Information Collection

Title of Information Collection: Generic Customer Satisfaction Surveys.

OMB Approval Number: 2535–0116.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Executive Order 12862, ''Setting Customer Service Standards'' requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers. HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

OMB Control Number, if applicable: 2535–0116.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 13,229. The number of respondents is 117,248, the number of responses is 117,248, the frequency of response is on occasion, and the burden hour per response is .80.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 23, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–04398 Filed 2–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–11]

30-Day Notice of Proposed Information Collection: Public Housing Mortgage Program and Section 30

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* March 31, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 28, 2015 at 80 FR 80791.

A. Overview of Information Collection

Title of Information Collection: Public Housing Mortgage Program and Section 30.

OMB Approval Number: 2577–0265.

Type of Request: Extension of currently approved collection.

Form Number: None. Because federal regulations have not been adopted for this program, no specific forms are required.

Description of the Need for the Information and Proposed Use: Section 516 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105–276, October 21, 1998) added Section 30, Public Housing Mortgages and Security Interest, to the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437z–2). Section 30 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to approve a Housing Authority's (HA) request to mortgage public housing real property or grant a security interest in other tangible forms of personal property if the proceeds of the loan resulting from the mortgage or security interest are used for low-income housing uses. Public Housing Agencies (PHAs) must provide information to HUD for approval to allow PHAs to grant a mortgage in public housing real estate or a security interest in some tangible form of personal property owned by the PHA for the purposes of securing loans or other financing for modernization or development of low-income housing.

Respondents (*i.e. affected public*): Members of Affected Public: State, Local or Local Government and Non-profit organization.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2577–0157	30	3	90	41.78	3,760	$157.65	$592,750
Total							

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 24, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–04402 Filed 2–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–04]

60-Day Notice of Proposed Information Collection: Public Housing Annual Contributions Contract and Inventory Removal Application

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice of revised proposed information collection.

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.

The public housing program funds low-rent projects owned and operated by public housing agencies (PHAs), subject to the terms and conditions contained in an Annual Contributions Contract (ACC) with certain requirements applicable to all projects and other requirements applicable in only certain conditions or types of projects. These program requirements govern how properties are funded and operated by PHAs including how properties are added or removed from their inventories. Information collections from PHAs assure compliance with all Federal program requirements.

DATES: *Comments Due Date:* May 2, 2016.

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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Annual Contributions Contractor and Inventory Removal Application.

OMB Approval Number: 2577–0075.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–51999; HUD–52190A; HUD–52190B; HUD–52840–A; HUD–53012A, HUD–53012B, HUD 52860, HUD 52860–B, HUD 52860–C; HUD 52860–D; HUD 52860–E, and HUD 52860–F, HUD–52860–G, HUD–5838 and HUD–5837.

Description of the need for the information and proposed use: HUD previously amended this information collection to consolidate all information that PHAs are required to submit to HUD in connection with their contractual duties to operate public housing dwelling units and other real property under the U.S. Housing Act of 1937. Section 5 of the United States Housing Act of 1937 (Pub. L. 75–412, 50 Stat. 888) permits the Secretary of HUD to make annual contributions to public housing agencies (PHAs) to achieve and maintain the lower income character of public housing projects. The Secretary is required to embody the provisions for such annual contributions in a contract guaranteeing payment. Applicable regulations are 24 CFR 941 for public housing development and 24 CFR 969 for continued operation of low-income housing after completion of debt service. This information collection also covers Public Housing Authority (PHA) submissions under Sections 18, 22, 33 and 32 that involve the authority of the HUD Secretary to approve PHA requests to remove certain public housing property from their inventories through demolition, disposition, voluntary conversion, required conversion, or homeownership conveyance, conversion through the Rental Assistance Demonstration Program (RAD) (authorized by the Consolidated and Further Continuing Appropriations Act of 2012), and any other HUD approved action that will remove Public Housing units from the ACC.

This amendment of this collection does two things. First, it adds submission requirements (HUD–52860–G) for when a PHA may choose to voluntarily apply to HUD to retain non-dwelling public housing real property

free from public housing use restrictions under the Annual Contributions Contract (ACC) and Declaration of Trust (DOT) pursuant to 2 CFR 200.311(c)(1). HUD considers retentions under this section of part 200 a ''removal'' of public housing real property even though the PHA will be retaining ownership of the property since the property will no longer be subject to public housing use restrictions. HUD will only approve retention requests when non-dwelling property is no longer needed for its originally authorized purpose. Second, it adds new submission requirements (HUD–5838 and HUD–5837) to collect information from any PHA who intends to remove all of its public housing dwelling units from its inventory (through any available law or HUD program, which may include Sections 18, 22, 33, 32 of the U.S. Housing Act of 1937 or the Rental Assistance Demonstration (RAD) program) and will alert HUD to its future plans for either termination of the public housing ACC or development of new dwelling units. Please note that a PHA who removes all public housing dwelling units will be instructed to fill out either HUD–5838 or HUD–5837, not both. HUD will use the information collected in HUD–5838 to review any PHA requests for expending Operating or Capital Funds for eligible closeout activities, for extension on closeout activities, for provision of technical assistance to the PHA during its required closeout activities, and determine eligibility for the Asset Repositioning Fee (ARF) or Demolition or Disposition Transitional Funding (DDTF). HUD will use the information in HUD–5837 to monitor compliance with the Public Housing ACC following removal of all dwelling units, to provide relevant technical assistance to the PHA, and to determine eligibility for the Asset Repositioning Fee (ARF) or Demolition or Disposition Transitional Funding (DDTF). In addition, this information request will assist HUD in maintaining accurate records of the federal public housing stock.

The functions and activities for Public Housing Annual Contributions Contractor, under OMB control number 2577–0270, has been combined with the Public Housing Inventory Removal Application, currently approved collection 2577–0075. The Office of Management and Budget (OMB) approved discontinuation of OMB Control Number, 2577–0270.

Respondents: Public housing agencies.

ACC Provision	Total responses	Total hours	Cost per hour	($) Total cost
1. Execute new ACC via HUD form 53012–A and B	42	205	$24.34	$4,990
2. Terminate or amend ACC	78	390	24.34	9,493
3. Request HUD approval of non-dwelling leases or agreements	114	735	24.34	17,890
4. HUD approval for easement uses	48	3,524	24.34	8,567
5. Submit General Depository Agreement (GDA) via form HUD 51999	265	651	24.34	15,845
6. Request to terminate GDA	107	202	24.34	4,917
7. ACC revisions to change year end dates	23	257	24.34	6,255
8. ACC to consolidate PHAS	18	217	24.34	5,282
9. ACC revision to transfer programs	43	391	24.34	9,517
10. Request review of Conflict of interest	102	951	24.34	23,147
11. Request pooling of insurance	5	97	24.34	2,361
12. Request for new Declaration of Trust (DOT) via form HUD 52190–A and B	142	1,249	24.34	30,400
13. Request DOT amendment or termination	221	2031	24.34	49,435
14. Amend ACC for Capital Fund Finance via form HUD 52840–A	73	788	24.34	19,180
15. Amend ACC for Mixed Finance Supplementary Legal Document	94	1,981	50	99,050
16. Amend ACC for Capital Grant	2,820	11,070	24.34	269,443
17. Amend ACC for Emergency Capital Fund Grant	38	100	24.34	2,434
18. Amend ACC Capital Fund for Safety and Security	75	96	24.34	2,337
19. Amend ACC to Recapture Capital Fund Grant	123	643	24.34	15,650
20. Amend ACC for Energy Performance Contract	38	192	24.34	4,673
21. Amend ACC for Community Facilities Grants	13	28	24.34	682
22. Demo Disposition Approvals and Removing Units form ACC-HUD Form 52860	162	1,746	24.34	42,498
23. Chicago Special Applications Center Approval for Inventory Removal Applications	851	6,010	33.06	225,072
24. Supplementary Document: Unique Legal Document used by HQ Staff Mixed-Finance Amendment to the ACC	60	1,440	50	72,000
Totals	6,765	34,944	.....	927,423

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: February 23, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–04495 Filed 2–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.16.GG00.99600.00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0051).

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on April 30, 2016.

DATE: To ensure that your comments on this ICR are considered, OMB must receive them on or before March 31, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*) or fax at 202–395–5806; and identify your submission with 'OMB Control Number 1028–0051 Earthquake Hazards Program Research and Monitoring'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Control Number 1028–0051 Earthquake Hazards Program Research and Monitoring' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Thomas Pratt, Earthquake Hazards Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 905, Reston, VA 20192 (mail); 703–648–6709 (phone); or *tpratt@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Research and monitoring findings are essential to fulfilling USGS's responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and recording earthquake activity nationwide. Residents, emergency responders, and engineers rely on the USGS for this accurate and scientifically sound information. The Earthquake Hazards Program funds external investigators to carry out these important activities. In response to our Program Announcements investigators submit proposals for research and monitoring activities on earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS's Earthquake Hazards Program objectives. Final reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards of a two- to five-year duration. Final reports are made available to the public at the Web site *http://earthquake.usgs.gov/research/external/*.

II. Data

OMB Control Number: 1028–0051.

Form Number: N/A.

Title: Earthquake Hazards Program Research and Monitoring.

Type of Request: Extension of a currently approved collection.

Respondent's Obligation: Required in order to obtain or retain benefits.

Frequency of Collection: Annually and once every two to five years.

Description of Respondents: Research scientists, engineers, and the general public.

Estimated Total Number of Annual Responses: 350 responses in total, consisting of 250 applications and narratives and 100 annual and final reports.

Estimated Time per Response: 45 hours per proposal application response and 12 hours per final or annual progress report.

Estimated Annual Burden Hours: 12,450 (11,250 hours per application and 1200 hours per final or annual progress report).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On November 5, 2015, we published a **Federal Register** notice (80 FR 68557) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on January 4, 2016. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

William Leith,

Senior Science Advisor for Earthquake and Geologic Hazards.

[FR Doc. 2016–04455 Filed 2–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DF0000. LXSSH1040000.16XL1109AF. HAG 16–0079]

Notice of Public Meetings for the John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S.

Department of the Interior, Bureau of Land Management (BLM), the John Day-Snake Resource Advisory Council (RAC) will meet as indicated below:

DATES: The John Day-Snake and Southeast Oregon RACs will hold a meeting Thursday and Friday, March 17th and 18th, 2016, in The Dalles, Oregon. The Thursday meeting, March 17th, will run from 12:00 p.m. to 5:00 p.m. On Friday, March 18th, the meeting will run from 8 a.m. to 1 p.m. A public comment period will be offered the second day, March 18th.

FOR FURTHER INFORMATION CONTACT: Larry Moore, Public Affairs Specialist, BLM Vale District Office, 100 Oregon St., Vale, Oregon 97918, phone (541) 473–6218, or email *l2moore@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The John Day-Snake RAC consists of 15 members, chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in central and eastern Oregon.

Agenda items for the meeting include the Blue Mountain Plan revision, updates on John Day Basin implementation, Deschutes and Snake River fee projects, and National Environmental Policy Act (NEPA) activity related to invasive species in the Vale and Prineville BLM Districts. Other topics will be posted along with the agenda on the John Day Snake RAC Web site at: *http://www.blm.gov/or/rac/jdrac_meetingnotes.php.*

All meetings are open to the public. Information to be distributed to the John Day-Snake RAC is requested prior to the start of each meeting. A public comment period will be offered on March 18th, at a time to be determined. Unless otherwise approved by the John Day-Snake RAC Chairs, the public comment period in each meeting will last no longer than 30 minutes. Each speaker may address the John Day-Snake RAC for a maximum of 5 minutes. A public call-in number for both meeting locations is provided on the John Day-Snake RAC Web site at *http://www.blm.gov/or/rac/jdrac.php.*

Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate business and all who seek to be heard regarding matters before the John Day-Snake or Southeast Oregon RAC.

Don Gonzalez,

Vale District Manager.

[FR Doc. 2016–04414 Filed 2–29–16; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–941]

Certain Graphics Processing Chips, Systems on a Chip, and Products Containing the Same Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on December 22, 2015, finding a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), as to certain asserted patent claims in this investigation.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3427. 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 this investigation on December 30, 2014 based on a complaint filed by Samsung Electronics Co., Ltd. of Gyeonggi-do, Republic of Korea; and Samsung Austin Semiconductor, LLC of Austin, Texas (collectively, Complainants). 79 FR 78477–78 (Dec. 30, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain graphics processing chips (GPUs), systems on a chip (SoCs), and products containing the same by reason of infringement of one or more of claims 1–4, 6, and 19–21 of U.S. Patent No. 6,147,385 (the '385 patent); claim 10 of U.S. Patent No. 6,173,349 (the '349 patent); claims 1, 2, 4, 19, 20, and 22 of U.S. Patent No. 7,056,776 (the '776 patent); and claims 1–3, 7–9, 12–15, 17, and 19 of U.S. Patent No. 7,804,734 (the '734 patent), and whether an industry in the United States exists as required by subsection (a)(2) of section 337. *Id.* The notice of investigation named the following respondents: NVIDIA Corporation (NVIDIA) of Santa Clara, California; Biostar Microtech International Corp. of New Taipei, Taiwan; Biostar Microtech U.S.A. Corp. of City of Industry, California; Elitegroup Computer Systems Co. Ltd. of Taipei, Taiwan; Elitegroup Computer Systems, Inc. of Newark, California; EVGA Corp. of Brea, California; Fuhu, Inc. of El Segundo, California; Jaton Corp. of Fremont, California; Mad Catz, Inc. of San Diego, California; OUYA, Inc. of Santa Monica, California; Sparkle Computer Co., Ltd. of New Taipei City, Taiwan; Toradex, Inc. of Seattle, Washington; Wikipad, Inc. of Westlake Village, California; ZOTAC International (MCO) Ltd of New Territories, Hong Kong; and ZOTAC USA, Inc. of Chino, California (collectively, Respondents). *Id.* The Office of Unfair Import Investigations (OUII) is also a party to this investigation. *Id.*

On May 1, 2015, the Commission determined not to review an initial determination terminating the investigation as to respondent Wikipad, Inc. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondent Wikipad, Inc. Based on a Consent Order Stipulation, Consent Order, and Settlement Agreement; Issuance of Consent Order (May 1, 2015). On May

13, 2015, the Commission determined not to review an initial determination granting intervention by Taiwan Semiconductor Manufacturing Co., Ltd. for a limited purpose. *See* Notice of Commission Determination Not to Review an Initial Determination Granting Intervention by Taiwan Semiconductor Manufacturing Co., Ltd. for a Limited Purpose (May 13, 2015). On September 17, 2015, the Commission determined not to review an initial determination terminating the investigation as to respondent ZOTAC International (MCO) Ltd. *See* Notice of Commission Decision Not to Review Two Initial Determinations That Terminated the Investigation as to Certain Asserted Patent Claims and as to One Respondent (Sept. 17, 2015).

On July 1, 2015, the Commission determined not to review an initial determination terminating the investigation as to the '776 patent. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation with Respect to U.S. Patent No. 7,056,776 (July 1, 2015). On August 13, 2015, the Commission determined not to review an initial determination finding that the economic prong of the domestic industry requirement has been satisfied. *See* Notice of a Commission Determination Not to Review an Initial Determination That the Economic Prong of the Domestic Industry Requirement Has Been Satisfied (Aug. 13, 2015). On September 17, 2015, the Commission determined not to review an initial determination terminating claims 19–21 of the '385 patent and claims 7–9, 12–15, 17, and 19 of the '734 patent. *See* Notice of Commission Decision Not to Review Two Initial Determinations That Terminated the Investigation as to Certain Asserted Patent Claims and as to One Respondent (Sept. 17, 2015).

On December 22, 2015, the ALJ issued his ID. Regarding the '385 patent, the ID concludes: (1) The accused products infringe claims 1–4 and 6, ID at 61–91; (2) there is a domestic industry, ID at 93–108; (3) claims 1–4 and 6 are not invalid for anticipation, obviousness, or lack of written description, ID at 114–64; and (4) NVIDIA's Tegra X1 chip is outside the scope of the investigation. ID at 91–93. Regarding the '349 patent, the ID concludes: (1) Certain accused products infringe claim 10, ID at 198–235; (2) there is a domestic industry, ID at 235–52; and (3) claim 10 is not invalid for anticipation, obviousness, or lack of written description, ID at 253–74. Regarding the '734 patent, the ID concludes: (1) Certain accused products infringe claims 1 and 3, ID at 307–35; (2) there is a domestic industry, ID at 336–48; and (3) claims 1 and 3 are not invalid for anticipation or obviousness. ID at 348–77.

On January 4, 2016, Respondents and OUII filed petitions for review of the ID. On January 5, 2016, the ALJ issued his recommended determination on remedy and bonding. On January 12, 2016, Complainants and OUII filed responses to the petitions.

Having examined the record of this investigation, including the ALJ's ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review (1) the ID's construction of ''mode'' and ''the receiver further configured'' of claim 1 of the '734 patent; (2) the ID's conclusion that the accused products infringe the '734 patent; (3) the ID's conclusion that there is a domestic industry for the '734 patent; (4) the ID's conclusion that claim 1 of the '734 patent is not invalid for anticipation by U.S. Patent No. 7,032,092 (Lai); (5) the ID's conclusion that claim 3 of the '734 patent is not invalid for obviousness over Lai in view of U.S. Patent No. 6,853,213 (Funaba); (6) whether the accused Tegra X1 products are within the scope of the investigation; and (7) whether Complainants proved that the AP20 products infringe the '349 patent.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following:

1. With regard to the construction of ''mode'' in claim 1 of the '734 patent, please discuss the significance of the repeated use of the permissive term ''may'' in the specification. *E.g.,* col. 4, lns. 28–29, 37–39, 48–51.

2. With regard to the construction of ''mode'' in claim 1 of the '734 patent, please discuss the significance of the recent Federal Circuit decision in *The Trustees of Columbia University in the City of New York* v. *Symantec Corporation,* No. 2015–1146 (Fed. Cir. Feb. 2, 2016).

3. With regard to the interpretation of Figure 4 of the '734 patent, please discuss the significance of the use of the term ''mode signal'' in the specification. Col. 5, lns. 13–16, 28–30.

4. With regard to the construction of ''the receiver further configured'' in claim 1 of the '734 patent, please discuss the significance of the cases cited in the ID at pages 302–04, and any other relevant case law.

5. With respect to the '734 patent, if the Commission were (1) to construe the claim term ''mode'' in claim 1 to mean ''a configuration required by the memory-device type''; and (2) to interpret the phrase ''the receiver further configured'' in claim 1 to require the capability of the receiver to operate in one mode or the other, but not both, when connected to a particular memory device; please discuss any impact this construction may have on the ID's findings and conclusions.

6. What portion of the accused devices is allegedly covered by the asserted claims? Do the patents in question relate to relatively minor features of the accused devices?

7. How would remedial orders barring the entry and further distribution of the products alleged to infringe the asserted claims of the '385, '349 and/or '734 patents affect the public interest as identified in 19 U.S.C. 1337(d)(1) and (f)(1)? The Commission is particularly interested in the commercial availability of alternatives to the potentially excluded products as well as any differences, including qualitative differences, between those alternatives and the potentially excluded products.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written

submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on March 7, 2016. Reply submissions must be filed no later than the close of business on March 14, 2016. Such submissions should address the ALJ's recommended determinations on remedy and bonding. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–941'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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: February 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–04406 Filed 2–29–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–308–310 and 520–521 (Fourth Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 31, 2016. Comments on the adequacy of responses may be filed with the Commission by May 13, 2016.

DATES: *Effective:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 12, 1986, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil and Taiwan (51 FR 45152). On February 10, 1987, Commerce issued an antidumping duty order on imports of carbon steel butt-weld pipe fittings from Japan (52 FR 4167). On July 6, 1992, Commerce issued antidumping duty orders on imports of carbon steel butt-weld pipe fittings from China and Thailand (57 FR 29702). Following the first five-year reviews by Commerce and the Commission, effective January 6, 2000, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (65 FR 753). Following second five-year reviews by Commerce and the Commission, effective November 21, 2005, Commerce issued a notice of the continuation of the antidumping duty orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (70 FR 70059). Following the third five-year reviews by Commerce and the Commission, effective April 15, 2011, Commerce issued a notice of the continuation of the antidumping duty

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–351, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

orders on imports of carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand (73 FR 21331). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, Japan, Taiwan, and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third five-year review determinations, the Commission defined the *Domestic Like Product* as all carbon steel butt-weld pipe fittings corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its expedited first five-year review determinations, and its full second five-year review determinations, the Commission defined a single *Domestic Industry:* Producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. One Commissioner defined the *Domestic Industry* differently in the original determinations concerning Brazil, Japan, and Taiwan. In the original determinations concerning China and Thailand, the Commission excluded two domestic producers, Tube Line and Weldbend, from the *Domestic Industry* under the related parties provision. In its expedited first five-year review determinations, the Commission once again excluded Tube Line from the *Domestic Industry* under the related parties provision but found that Weldbend was no longer a related party eligible for exclusion. Certain Commissioners did not exclude Tube Line from the *Domestic Industry* in the expedited first five-year reviews. In the full second five-year review determinations, the Commission determined that appropriate circumstances did not exist for excluding any domestic producer from the *Domestic Industry* as a related party. In its expedited third five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of carbon steel butt-weld pipe fittings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited

or full reviews. The deadline for filing such comments is May 13, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that

product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–04164 Filed 2–29–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063–1064 and 1066–1068 (Second Review)]

Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam Institution of five-year reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 31, 2016. Comments on the adequacy of responses may be filed with the Commission by May 13, 2016.

DATES: *Effective:* March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 1, 2005, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam (70 FR 5143–5156). Following the five-year reviews by Commerce and the Commission, effective April 29, 2011, Commerce issued a continuation of the antidumping duty orders on imports of frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam (76 FR 23972). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, Subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, India, Thailand, and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original affirmative determinations and its full first five-year review determinations, the Commission defined the *Domestic Like Product* to consist of fresh warmwater shrimp and prawns and

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–352, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

those frozen warmwater shrimp and prawn products defined in Commerce's scope definition. Certain Commissioners defined the *Domestic Like Product* differently in the original determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original affirmative determinations and its full first five-year review determinations, the Commission defined the *Domestic Industry* to consist of: (1) All entities that harvest fresh warmwater shrimp (*i.e.,* fishermen and shrimp farmers) and (2) all processors of frozen shrimp products within the scope definition except for firms that do not engage in sufficient production-related activities to be considered domestic producers.[2] In addition, five firms were excluded by the Commission from the *Domestic Industry* pursuant to the related parties provision in the original determinations and one firm was excluded in the full first five-year review determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 13, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution:—If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

[2] The Commission found that processing activities such as deheading, grading, machine peeling, deveining, and cooking all constitute domestic production but that marinating and skewering do not constitute domestic production. The Commission also concluded that breading did not constitute domestic production activity because breaded shrimp was not part of the *Domestic Like Product.*

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2009.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2009, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product*

produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–04163 Filed 2–29–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1279 (Final)]

Hydrofluorocarbon Blends and Components From China; Scheduling of the Final Phase of an Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping duty investigation No. 731–TA–1279 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of hydrofluorocarbon (''HFC'') blends and components from China, provided for in subheadings 3824.78.00 (HFC blends) and 2903.39.20 (HFC components) of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''blended hydrofluorocarbons (HFCs) and single HFC components of those blends thereof, whether or not imported for blending. HFC blends covered by the scope are R–404, a zeotropic mixture consisting of 52 percent 1,1,1-Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.

The single component HFCs covered by the scope are R–32, R–125, and R–143a. R–32 or Difluoromethane has the chemical formula CH_2F_2, and is registered as CAS No. 75–10–5. It may also be known as HFC–32, FC–32, Freon-32, Methylene difluoride, Methylene fluoride, Carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. R–125 or 1,1,1,2,2-Pentafluoroethane has the chemical formula CF_3CHF_2 and is registered as CAS No. 354–33–6. R–125 may also be known as R–125, HFC–125, Pentafluoroethane, Freon 125, and Fc-125, R–125. R–143a or 1,1,1-Trifluoroethane has the chemical formula CF_3CH_3 and is registered as CAS No. 420–46–2. R–143a may also be known as R–143a, HFC–143a, Methylfluoroform, 1,1,1-Trifluoroform, and UN2035.

Excluded from this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs).

Also excluded from this investigation are patented HFC blends, such as ISCEON® blends, including MO99TM (RR–438A), MO79 (R–422A), MO59 (R–417A), MO49PlusTM (R–437A) and MO29TM (R–4 22D), Genetron® PerformaxTM LT (R–407F), Choice® R–421A, and Choice® R–421B.

We note that HFC blends were classified at HTSUS subheading 3824.78.0020 and single component HFCs were classified at HTSUS subheading 2903.39.2030 in 2015.''

DATES: *Effective:* February 1, 2016.

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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that imports of hydrofluorocarbon blends and components thereof from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 25, 2015, by the American HFC Coalition, and its members: Amtrol, Inc. (West Warwick, Rhode Island); Arkema, Inc. (King of Prussia, Pennsylvania); The Chemours Company FC LLC (Wilmington, Delaware); Honeywell International Inc. (Morristown, New Jersey); Hudson Technologies (Pearl River, New York); Mexichem Fluor Inc. (St. Gabriel, Louisiana); Worthington Industries, Inc. (Columbus, Ohio); and District Lodge 154 of the International Association of Machinists and Aerospace Workers (''IAMAW'').

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 7, 2016, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on Tuesday, June 21, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 10, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on June 14, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 14, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 28, 2016. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before June 28, 2016. On July 13, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 15, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–04399 Filed 2–29–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–551–553 and 731–TA–1307–1308 (Preliminary)]

Certain New Pneumatic Off-the-Road-Tires From China, India, and Sri Lanka

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain new pneumatic off-the-road tires (''OTR tires'') from India, provided for in subheadings 4011.20.10, 4011.20.50, 4011.61.00, 4011.62.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.93.40, 4011.93.80, 4011.94.40, 4011.94.80, 8431.49.90, 8709.90.00, and 8716.90.10 [2] of the Harmonized Tariff Schedule of the United States, that are allegedly sold in the United States at less than fair value (''LTFV'') and imports of OTR tires that are allegedly subsidized by the governments of India and Sri Lanka.

The Commission also found that imports of OTR tires from China are negligible pursuant to section 771(24) of the Act, and its investigations with regard to imports from this country are thereby terminated pursuant to section 733(a)(1) of the Act.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations of OTR tires from India and Sri Lanka under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 8, 2016, Titan Tire Corporation of Des Moines, Iowa and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC of Pittsburgh, Pennsylvania filed petitions with the Commission and Commerce, alleging that an industry in the United

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] OTR tires may also enter under the following HTS subheadings: 4011.99.45, 4011.99.85, 8424.90.90, 8431.20.00, 8431.39.00, 8431.49.10, 8431.49.90, 8432.90.00, 8433.90.50, 8503.00.95, 8708.70.05, 8708.70.25, 8708.70.45, and 8716.90.50.

States is materially injured or threatened with material injury by reason of imports of OTR tires from China and India that are alleged to be sold in the United States at LTFV and imports of OTR tires alleged to be subsidized by the governments of China, India, and Sri Lanka. Accordingly, effective January 8, 2016, the Commission, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation Nos. 701–TA–551–553 and antidumping duty investigation Nos. 731–TA–1307–1308 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 15, 2016 (81 FR 2236). The conference was held in Washington, DC, on January 29, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on February 24, 2016.[3] The views of the Commission are contained in USITC Publication 4594 (March 2016), entitled *Certain New Pneumatic Off-the-Road-Tires from China, India, and Sri Lanka:* Investigation Nos. 701–TA–551–553 and 731–TA–1307–1308 (Preliminary).

By order of the Commission.

Issued: February 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–04400 Filed 2–29–16; 8:45 am]

BILLING CODE 7020–02–P

[3] The Commission has the authority to toll statutory deadlines during a period when the Federal government is closed. Because the Commission was closed on January 25 and 26, 2016 due to inclement weather in Washington, DC, the Commission tolled the statutory deadline for these investigations by two days.

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Post Enrollment Data Collection of Job Corps Participants, Revision With Changes

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed revisions to the Post Enrollment Data Collection System (PEDCS) by the Office of Job Corps/ETA in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA).

Job Corps is revising the data collection system for post enrollment student outcomes to comply with the reporting provisions of the Workforce Innovation and Opportunity Act (WIOA). Currently, Job Corps is soliciting comments concerning the revision of data collection regarding the Post Enrollment Data Collection (PEDC) of Job Corps Participants, using post-center surveys of Job Corps graduates and former enrollees (OMB Control Number 1205–0426). The current OMB approval expires December 31, 2018.

This **Federal Register** Notice helps 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.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 2, 2016.

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 ETA–2016–0001 or via postal mail, commercial delivery, or hand delivery. A copy of the proposed ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from *http://www.regulations.gov* or by contacting Lawrence Lyford by telephone at 202–693–3121(this is not a toll-free number) or by email at *lyford.lawrence@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 877–889–5627 (TTY/TDD). Fax: 202–693–3113.

Mail and hand delivery/courier: Send written comments to Lawrence Lyford, Office of Job Corps, Room N–4507, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Due to security-related concerns, there may be a significant delay in the receipt of submissions by United States mail. You must take this into consideration when preparing to meet the deadline for submitting comments.

Comments submitted in response to this comment request will become a matter of public record and will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. In addition, comments, regardless of the delivery method, will be posted without change on the *http://www.regulations.gov* Web site; consequently, the Department recommends comments not include personal information such as social security number, personal address, telephone number, email address, or confidential business information that they do not want made public. It is the responsibility of the commenter to determine what to include in the public record.

SUPPLEMENTARY INFORMATION:

I. Background

Job Corps is an intensive, residential training program for at-risk youth ages 16 through 24. It addresses multiple barriers to employment faced by youth throughout the United States. Job Corps has been operating under the authorization of the Workforce Investment Act, which is now being replaced by Title I, Subtitle C, of the Workforce Innovation Opportunity Act (WIOA). The WIOA, in Section 116, amends the performance accountability system to replace the current indicators of performance for Job Corps centers and programs with the same primary indicators of performance that are applicable to the youth formula programs.

The program is principally carried out through a nationwide network of 126 Job Corps centers. The centers are located at facilities either owned or

leased by the federal government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. It is the Department's responsibility to establish Job Corps centers and to select operators for them. Of the 126 current centers, 27 are operated by the United States Department of Agriculture, through an interagency agreement. The remaining 99 centers are managed and operated by large and small corporations, and nonprofit organizations selected by the Department in accordance with the Federal Acquisition Regulations, and in most cases, through a competitive procurement process. Many of the current contractors manage and operate more than one center.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for an agency to properly perform its functions, including whether the information will have practical utility;
- evaluate the agency's accuracy in estimating 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 information collection on those who respond—including information obtained through appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

III. Current Actions

This submission requests comments on the data collection instruments that will be used to collect post-enrollment data about individuals who are no longer actively participating in Job Corps. These individuals either graduated from Job Corps, or demonstrated their commitment by either completing the Career Preparation Period (CPP) or participating in the program for at least 60 days (former enrollees).

The data collection instrument for graduates and former enrollees is called the Post Enrollment Data Collection System (PEDCS). Administration of the PEDCS will facilitate the key data collection of post enrollment outcomes during the second and fourth quarters after exit. This submission also requests approval for two brief questionnaires (one for employers and one for schools or training institutions) that will be used to collect verification data about initial placement and effectiveness in serving employers.

The current post-enrollment survey system contacts Job Corps graduates and former enrollees at 13 weeks after initial job placement, and graduates at 6 and 12 months after initial placement. In adherence to the new WIOA requirements, the proposed PEDCS will collect post-enrollment outcomes from Job Corps graduates and former enrollees at the 2nd quarter and 4th quarter following exit. Job Corps will use the information collected through the proposed PEDCS to report the following five of the six primary WIOA performance metrics from Section 116:

- The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;
- the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- the percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (and, for those with a secondary school diploma or its recognized equivalent, have obtained or retained employment or are in an education or training program leading to a recognized postsecondary credential), during participation in or within one year after exit from the program; and
- the indicator(s) of effectiveness in serving employers.

Job Corps will also use the information collected from the proposed PEDCS to cover the following additional reporting requirements mandated by WIOA:

- The number of graduates who entered the Armed Forces;
- the number of graduates who entered apprenticeship programs;
- the number of graduates who received a regular secondary school diploma;
- the number of graduates who received a State recognized equivalent of a secondary school diploma;
- the number of graduates who entered unsubsidized employment related to the career and technical education and training received through the Job Corps program;
- the number of graduates who entered unsubsidized employment not related to the education and training received;
- the percentage and number of graduates who enter postsecondary education;
- the average wage of graduates who enter unsubsidized employment—

(1) on the first day of such employment; and

(2) on the day 6 months after such first day.

To maximize the comparability of the data collected from the different subgroups of students, the second and fourth quarter data collection instrument will use modules with identical sets of questions on the same topics.

Type of Review: Revision with changes.

Title: Post Enrollment Data Collection of Job Corps Participants.

OMB Number: 1205–0426.

Affected Public: Individuals or households and for profit Business/Education institutions.

Total Annual Burden Cost for Respondents: N/A.

Data collection activity	Number of respondents	Frequency	Total responses	Average time per response (hours)	Burden hours
Online survey of Former Enrollees and Graduates during the second and fourth quarter after exit	14,000	2	28,000	0.20	5,600
Telephone interview of Former Enrollees and Graduates during the second and fourth quarter after exit	30,200	2	60,400	0.25	15,100
Employer/Institution Re-verification	5,000	1	5,000	0.20	1,000
Total	49,200		93,400		21,700

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the ICR. They will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–04384 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pharmacy Billing Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Pharmacy Billing Requirements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1240-010* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authorization for the Pharmacy Billing Requirements information collection. The OWCP is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.;* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.;* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require the OWCP to pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, the OWCP must receive the required data elements—including the name of the patient/beneficiary, the National Drug Code number of each drug prescribed, the quantity provided, the prescription number, and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable the OWCP to determine whether bills for drugs submitted directly by pharmacies or as reimbursement requests submitted by claimants should be paid. *See* 20 CFR 10.801, 30.701, 725.701, and 725.705. FECA section 9, BLBA section 413, and EEOICPA section 3629(c) authorize this information collection. *See* 5 U.S.C. 8103, 30 U.S.C. 936, and 42 U.S.C. 7384t.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0050.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 19, 2015 (80 FR 50327).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0050. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Pharmacy Billing Requirements.

OMB Control Number: 1240–0050.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 4,344.

Total Estimated Number of Responses: 1,453,300.

Total Estimated Annual Time Burden: 24,421 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: February 22, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04397 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; DOL Generic Solution for Funding Opportunity Announcements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Administration and Management (OASAM) sponsored information collection request (ICR) titled, ''DOL Generic Solution for Funding Opportunity Announcements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201601-1225-005* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–DM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the DOL Generic Solution for Funding Opportunity Announcements information collection. The DOL periodically solicits grant applications by issuing a Funding Opportunity Announcement (FOA). To ensure grants are awarded to the applicant(s) best suited to perform the functions of the grant, applicants are generally required to submit a two-part application. The first part of DOL grant applications consists of submitting Standard Form 424, Application for Federal Assistance, which is approved by the OMB under Control Number 4040–0004. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities, in accordance with a statement of work and/or selection criteria. This ICR is a generic solution for an FOA that extends information collection requirements beyond what is collected on currently approved standard forms. Individual statues providing funding for grant awards authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1225–0086.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 2, 2015 (80 FR 75470).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1225–0086. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–DM.

Title of Collection: DOL Generic Solution for Funding Opportunity Announcements.

OMB Control Number: 1225–0086.

Affected Public: State, Local, and Tribal Governments; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 7,500.

Total Estimated Number of Responses: 7,500.

Total Estimated Annual Time Burden: 187,500 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 23, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04394 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Lead in General Industry Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Lead in General Industry Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr201511-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Lead in General Industry Standard information collection that helps to protect workers from the adverse effects associated with occupational exposure to lead. An employer subject to the standard must monitor exposure to lead, provide medical surveillance, train employees about the hazards of lead, and establish and maintain accurate records of worker exposure to lead. Employers, workers, physicians, and the Government use these records to ensure exposure to lead does not harm workers. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0092.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 29, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 25, 2015 (80 FR 57878).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0092. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Lead in General Industry Standard.

OMB Control Number: 1218–0092.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 53,935.

Total Estimated Number of Responses: 3,616,044.

Total Estimated Annual Time Burden: 1,030,305 hours.

Total Estimated Annual Other Costs Burden: $92,636,813.

Dated: February 22, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04395 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Lead in Construction Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Lead in Construction Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely

respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1218-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Lead in Construction Standard information collection requirements codified in regulations 29 CFR 1926.62 that help to protect workers from the adverse effects associated with occupational exposure to lead. An employer subject to the Standard must monitor exposure to lead, provide medical surveillance, train employees about the hazards of lead, and establish and maintain accurate records of worker exposure to lead. Employers, workers, physicians, and the Government use these records to ensure exposure to lead does not harm workers. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0189.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 29, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 22, 2016 (80 FR 57231).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0189. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Lead in Construction Standard.

OMB Control Number: 1218–0189.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 119,853.

Total Estimated Number of Responses: 8,284,730.

Total Estimated Annual Time Burden: 1,243,686 hours.

Total Estimated Annual Other Costs Burden: $66,942,938.

Dated: February 23, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04396 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Pattern of Violations

ACTION: Notice.

SUMMARY: On February 29, 2016, the Department of Labor (DOL) will submit the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Pattern of Violations,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201508-1219-003* (this link will only become active on March 1, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of

the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Pattern of Violations information collection. The Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, places the ultimate responsibility on mine operators for ensuring the safety and health of miners. The legislative history of the Mine Act emphasizes that Congress included the pattern of violations (POV) provision for mine operators who demonstrated a disregard for the safety and health of miners through a recurring pattern of significant and substantial violations. The MSHA was to use the POV provision in situations where other enforcement actions had been ineffective at bringing the mines into compliance with safety and health standards. Regulations 30 CFR 104.2(a)(8) provides that the MSHA will consider mitigating circumstances in determining whether to issue a POV Notice. Among the items the MSHA could consider is an approved corrective action program to reduce significant and substantial violations accompanied by positive results. Mine Act sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a), 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0150.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 29, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 23, 2015 (80 FR 57399).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0150. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Pattern of Violations.

OMB Control Number: 1219–0150.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 100.

Total Estimated Annual Time Burden: 13,600 hours.

Total Estimated Annual Other Costs Burden: $10,000.

Dated: February 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04480 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reemployment Services and Eligibility Assessment Program

ACTION: Notice.

SUMMARY: On February 29, 2016, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Reemployment Services and Eligibility Assessment Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201509-1205-008* (this link will only become active on March 1, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Reemployment Services and Eligibility Assessment (RESA) Program information collection. Social Security Act section 303(a)(6) authorizes the DOL to prescribe standard definitions, methods and procedures, and reporting requirements for the collection of information on benefit payment accuracy and the reemployment of unemployment insurance benefit recipients to ensure the verification of these data. *See* 42 U.S.C. 503(a)(6). The DOL uses information collected on Forms ETA–9128, ETA–9128X, ETA–9129, and ETA–9129X to evaluate State performance in terms of service delivery and to report on the RESAs, including the number of scheduled in-person reemployment and eligibility assessments, the number of individuals who failed to appear for scheduled assessments, actions taken as a result of individuals not appearing for an assessment (*e.g.*, benefits termination), results of assessments (*e.g.*, referral to reemployment services, found in compliance with program requirements), estimated savings resulting from cessation of benefits, and estimated savings as a result of accelerated reemployment. Information collected on Forms ETA–9128X and ETA–9129X is required by the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96. This information collection has been classified as a revision, because of proposed changes that would have the population of claimants who are most likely to exhaust their benefits be reported on Forms ETA–9128 and ETA–9129 and that ex-servicemember claimants be reported on Forms ETA–9128X and ETA–9126X. In addition, the DOL proposes to eliminate comparison group information on Form ETA–9129; only information about the individuals selected for treatment will be collected.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0456. The current approval is scheduled to expire on February 29, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 7, 2015 (80 FR 38748).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0456. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Reemployment Services and Eligibility Assessment Program.

OMB Control Number: 1205–0456.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 48.

Total Estimated Number of Responses: 768.

Total Estimated Annual Time Burden: 384 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04477 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; 1,3-Butadiene Standard

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: On February 29, 2016, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''1,3-Butadiene Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 31, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201512-1218-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the 1,3-Butadiene Standard information collection requirements codified in regulations 29 CFR 1910.1051. The purpose of this standard and its information collection requirements is to provide protection for workers from the adverse health effects associated with occupational exposure to 1,3-butadiene. The information collections involve maintaining specified monitoring results, training, and medical surveillance records; providing notifications to workers; providing notifications to other employers at multi-employer worksites; establishing written compliance exposure goal, respirator, and emergency plans; respirator filter element labeling; and reporting information to Government officials under certain circumstances. Occupational Safety and Health Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0170.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 29, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 26, 2015 (80 FR 65246).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0170. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: 1,3-Butadiene Standard.

OMB Control Number: 1218–0170.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 50.

Total Estimated Number of Responses: 3,649.

Total Estimated Annual Time Burden: 915 hours.

Total Estimated Annual Other Costs Burden: $112,808.

Dated: February 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–04479 Filed 2–29–16; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2016–2]

Information Technology Upgrades for a Twenty-First Century Copyright Office

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Copyright Office has prepared a Provisional Information Technology Modernization Plan (''IT Plan'') at the direction of Congress that details necessary IT upgrades to transform the Office to better meet the needs of the current and future copyright system. As further directed by Congress, the Register is seeking public comments to help inform the Office on the funding strategy and implementation timeline for the IT Plan.

DATES: Written comments must be received no later than March 31, 2016 at 11:59 p.m. Eastern Time.

ADDRESSES: The Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/policy/itupgrade/index.html.* If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Catherine Rowland, Senior Advisor to the Register of Copyrights, or Regan A. Smith, Associate General Counsel, by email at *itcomments@loc.gov,* or by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Technology is the cornerstone of a modern copyright system, and the need to modernize the Office's technological infrastructure has been well documented. The Office has engaged in four years of deliberative assessment and public review to establish the framework for a modernized IT system to more efficiently serve the needs of authors, users of copyrighted works, and the general public.[1] Congress also has taken note; for example, during the copyright review process, the House Judiciary Committee expressed concern that the Office's technology needed to be upgraded to respond to the needs of copyright owners and users,[2] and the

[1] *See, e.g.,* Register of Copyrights, Priorities and Special Projects of the United States Copyright Office 13 (2011); Technical Upgrades to Registration and Recordation Functions in Docket No. 2013–2, 78 FR 17722 (Mar. 22, 2013); *Oversight of the U.S. Copyright Office: Hearing Before the H. Subcomm. on Judiciary,* 114th Cong. 3 (statement of Maria A. Pallante, Register of Copyrights and Director of the United States Copyright Office) (describing suggestions regarding IT modernization received from the public in connection with its technical upgrades study); Robert Brauneis, Abraham L. Kaminstein Scholar in Residence, U.S. Copyright Office, Transforming Document Recordation at the United States Copyright Office, (2015), available at *http://www.copyright.gov/docs/recordation/;* Office of the Chief Information Officer, Report and Recommendations of the Technical Upgrades Special Project Team (2015) (''Technical Upgrades Report'').

[2] *See, e.g., U.S. Copyright Office: Its Functions and Resources, Hearing Before the H. Comm. on the Judiciary,* 114th Cong. at 2 (2015) (statement of

House Committee on Administration recently conducted a hearing entitled ''Improving Customer Service for the Copyright Community.'' [3] The copyright community also has weighed in, stressing the importance of technology to the national copyright system and noting that the Office currently does not have what it needs to run the copyright system sufficiently.[4] The Office's December 1, 2015 Strategic Plan for Fiscal Years 2016–2020 (''Strategic Plan,'' available at *http://copyright.gov/reports/strategic-plan/USCO-strategic.pdf*) [5] provides a vision of overall Office modernization, including the necessary integration of legal, business, and technical components.

Accordingly, in its report accompanying the Consolidated Appropriations Act of 2015, the House Committee on Appropriations noted:

> The Committee fully understands the importance of the Copyright Office as it relates to creativity and commercial artistic activity not only within the United States but also on a world-wide basis. In order to serve the copyright owners and the copyright community in the 21st century, a robust modern information technology (IT) operation will be necessary. The $1.5 million provided in fiscal year 2015 began the effort to determine the requirements for a modern IT environment. With the planning underway, the Committee directs the Register of Copyrights to report, to the Committee on Appropriation and relevant Authorizing Committees of the House on a detailed plan on necessary IT upgrades, with a cost estimate, that are required for a 21st century copyright organization.[6]

Additionally, the House Committee on Appropriations directed the Office to seek public comment regarding a funding strategy and an implementation timeline for the IT Plan.[7] After significant review and analysis, the Office has delivered a provisional IT Plan (available at *www.copyright.gov/reports/itplan*), and now seeks public input concerning these issues. While this **Federal Register** Notice is not a substitute for the details set forth in the IT Plan, a brief summary of the plan is provided below. The IT Plan is flexible in that it may be implemented according to a variety of governance protocols, approvals, and controls between the Copyright Office and larger Library of Congress; it does, however, depart from the status quo in which the Copyright Office manages software applications and the Library of Congress manages underlying IT systems.

A. Modernizing the Copyright Office's Information Technology

The IT Plan is a companion to the Strategic Plan, which envisions modernization of the Office as a comprehensive undertaking that addresses: The national copyright system's IT, data, and infrastructure needs; business, regulatory and legal issues under the Office's care; and related potential changes to the copyright laws of the United States.[8] The major changes necessary to effectively examine, register, protect, document, and license copyright interests and make useful information available in the digital age cannot be accomplished in the current technology state.

The IT Plan heeds the Strategic Plan's underlying call for the Copyright Office of the twenty-first century to be lean, nimble, results-driven, and future-focused, and translates those themes into a comprehensive and exhaustive technology modernization plan. The IT Plan would establish an IT system that meets the current and future needs of a modern copyright agency by minimizing costly infrastructure needs, embracing cloud services, and utilizing mobile technologies. It prioritizes data integrity and security controls, and decreases risk by spreading projects among multiple partners or vendors. Under the plan, the Office would phase out legacy systems and assume a clean-slate, carefully targeted strategy in moving forward. The IT Plan assumes that modernization must be managed from within the Copyright Office, relying upon individuals who work alongside of, and are fully accountable to, the Office's legal and operational experts.

Together, the Strategic Plan and the IT Plan provide for a modernization approach that will transform copyright administration in the United States. Customers will be able to transact with the Office easily, quickly, and from anywhere at any time, using any number of consumer platforms to secure copyrights and access data, including licensing or public domain information. Systems will be designed to yield quick, authoritative results, encouraging participation, partnerships, and commerce. Such a modern Office will offer a rich public record that is easily accessible by all, providing enormous benefit to copyright authors and owners, consumers, services, users, and anyone else with an interest in the national copyright system.

The implementation of a modern IT system will require careful planning and coordination during the transition period, as required under applicable federal practices. The IT Plan makes a core assumption that modernization requires, and will receive, singular attention and focus. Assuming this dedicated, full-time commitment to modernization, the IT Plan proposes a five-year implementation timeline that projects that users will experience meaningful differences in services within three years. The five-year timeline is divided into four sequential phases, during which new initiatives will be implemented while the Office maintains continuity of services. These phases may overlap as appropriate for mission-critical services; for example, a modernized recordation system could be completed in advance of an integrated system of records program. Generally speaking, the four phases include:

- *Phase 0:* The initial phase is dedicated to establishing the IT operating model, processes, and planning necessary for success in the future phases. This includes

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Chairman Goodlatte) (''Burdened by a lack of funds and dependent upon the vastly different technology needs of the Library of Congress, the Copyright Office has been unable to respond to the needs of the copyright community, harming copyright owners and users alike.''); *id.* at 3 (statement of Ranking Member Conyers) (''[T]he Office's recordation system continues to be a cumbersome and costly process that requires manual examination and data entry. In addition, the functionality of the Office's databases and the usability of the Office's Web site must be improved. Further, the security of deposited digital works must be strengthened, and the copyright community needs a system which provides a more usable and searchable public record of copyrighted material . . . . The Copyright Office is aware of the need to modernize so that it can adapt to ever-evolving technology and the needs of the copyright community.'').

[3] *Improving Customer Service for the Copyright Community: Ensuring the Copyright Office and the Library of Congress Are Able to Meet the Demands of the Digital Age: Hearing Before the H. Comm. on Administration,* 114th Cong. (2015).

[4] *See, e.g., U.S. Copyright Office: Its Functions and Resources* at 24 (statement of Lisa A. Dunner, Partner, Dunner Law PLLC, on behalf of the Section of Intell. Prop. L. of the Am. Bar Ass'n) (''The Copyright Office needs a sophisticated, efficient IT system responsive to its needs and those of its users.''); *id.* at 43 (statement of Nancy J. Mertzel, Schoeman Updike Kaufman & Stern LLP, on behalf of the Am. Intell. Prop. L. Ass'n) (''As the [Copyright Office's] technical upgrades report explains, '[t]he Office's technology infrastructure impacts all of the Office's key services and is the single greatest factor in its ability to administer copyright registration, recordation services, and statutory licenses effectively.' Yet, the Copyright Office does not control its technology. Rather, it is controlled by the Library of Congress, and housed on the Library's servers. In fact, even equipment purchased by the Copyright Office with its appropriated funds, is controlled by the Library. Additionally, the Office is dependent upon the Library's IT staff. However, the Library IT staff has other responsibilities, and is not well-versed in the needs of the copyright community. AIPLA urges this Committee to explore ways to give the Copyright Office greater autonomy over its IT infrastructure and services.'' (citations omitted)).

[5] Register of Copyrights, Positioning the United States Copyright Office for the Future, 18 (December 1, 2015).

[7] H. Rep. 114–110, 114th Cong. (2015).

[8] Register of Copyrights, Positioning the United States Copyright Office for the Future, 18 (December 1, 2015).

establishing a project management office and adopting a transition plan to facilitate migration to a cloud-based system, while retaining necessary support from current vendors. Core IT governance and procedures will be adopted during this phase, and market analysis of potential vendors completed.

- *Phase 1:* The Office would assume interim control of existing IT systems and coordinate support for legacy systems. Phase 1 also would: Build core infrastructure and stand up the key back-office and desktop capabilities necessary to run IT operations; migrate the national recordation system to its target electronic platform; and continue design on solutions for additional core applications and services.
- *Phase 2:* This phase includes full deployment of the remaining core mission Office applications. The existing registration system will be replaced in a way that improves user experience and includes a highly secure, certified digital repository, with appropriately serious attention to protecting electronically transmitted deposits. Existing copyright data would be migrated to a cloud-based system of records, linking registration with recordation data. Effective data management would facilitate efficient updating of records, promoting data accuracy. The Office would have the capability of directly interacting with outside organizations to share relevant data through APIs, thus facilitating business investment and entrepreneurship. By the end of Phase 2, the Office would have full control over its IT management, and some legacy support agreements could be phased out.
- *Phase 3:* In Phase 3, the Office would be fully transitioned to its new environment. Focus will turn toward enhancing core Office services with continuous improvement. The CIO will identify future desired technology investments to increase service capabilities.

At the conclusion of the four phases, the Office IT will operate within a steady state environment. Operations and maintenance will continue, with performance of existing services assessed relative to identified benchmarks. At the same time, the Office would continue to engage with stakeholders to identify potential new capabilities and services.

Within this phased framework, there are a variety of ways to proceed with development. The Office is interested in maximizing flexible opportunities for outside entities to efficiently aid the effort. The Office would expect to leverage the experience of expert contractors for short-term projects, consider traditional contracting, consider no-cost contracting, and review other alternatives as well.

B. Funding a Modern Information Technology System

Creating a more flexible and robust IT system will require the Office to fund both capital and operating expenses, not only during the five-year IT Plan, but on an ongoing basis.

Currently, the Office has two main funding sources: (1) Fees paid by individual authors, corporate entities, and other customers; and (2) annual appropriated dollars reflecting the value of the Office's mission to entrepreneurs, the public, and the economy. Historically, fees have made up the lion's share of the Office's basic budget, ranging from 59% to 67% in the past five years. Congress decides, in the course of the federal budget authorization, how much income the Office may use to cover its costs. Thus, the Office may spend incoming fees, but only up to the amount authorized by Congress. Tax dollars comprise a smaller, but critical, part of the Office's budget and reflect the value of the Office's services to the general public—for example, by providing the public with a searchable database of copyright registration and ownership information. The Office also has a small reserve account, which includes any fees that exceeded the Office's annual spending limit, de-obligated prior year funds, and other fees authorized for expenditure but not spent. The reserve fund, however, is not a revolving fund account and is subject to congressional review every year. The Office is considering changes to the structure overall, including the option to migrate costs previously categorized as capital expenses to operating expenses in order to fund infrastructure improvements, as reflected in the IT Plan.

Since 1997, the Office has conducted studies every several years to assess and set appropriate fees for its services. The analysis is governed by section 708 of the Copyright Act, which specifies various services for which the Office may charge fees and provides that the Register may adjust these fees to ''not more than necessary to cover the reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs.'' [9] Additionally, fees for core services must be ''fair and equitable and give due consideration to the objectives of the copyright system.'' These objectives include the value of copyright registration and recordation, and registration must remain relatively affordable to encourage applications, which are voluntary. The Office most recently adjusted its fees in 2014, when it issued a revised fee schedule that increased some fees, reduced others, and introduced a reduced fee for individual authors of single works.

The Office fee-setting is an iterative regulatory process. In assessing its fees, the Office need not assume ''one size fits all''; indeed, the more flexible the IT of the Office, the more likely the Office can institute practices and regulations that meet the targeted needs of applicants, *e.g.*, software developers or photographers or digital filmmakers.

[9] 17 U.S.C. 708(b)(2).

II. Subjects of Inquiry

To assess both how to implement and fund a modern copyright IT system, the Office is interested in public comment on the following subjects:

1. Please comment on the proposed five-year timeline for IT modernization based on the phases set forth in detail in the IT Plan, which incorporate best practices of the federal government.
2. Should the modernization be funded from fees, appropriated dollars, or a combination of both, and, if both, is there an ideal formula or ratio?
3. What authorities or flexibilities, if any, should be included in 17 U.S.C. 708 regarding whether and how the Office may recover its reasonable costs of operation (including in the aggregate as opposed to based upon individual services), differentiate between customers or users, and/or fund future investments, not only as to the five-year plan but on an ongoing basis?
4. Should the Copyright Office fund capital and operating expenses differently? If so, how?
5. Please identify anything else that the Copyright Office should consider in relation to the funding strategy, benefits, or implementation of IT modernization.

Dated: February 25, 2016.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–04423 Filed 2–29–16; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–018)]

NASA Advisory Council; Ad Hoc Task Force on STEM Education; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Ad Hoc Task Force on Science, Technology, Engineering and Mathematics (STEM) of the NASA Advisory Council (NAC). This Task Force reports to the NAC.

DATES: Thursday, March 24, 2016, 10:00 a.m. to 2:00 p.m., EST.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Executive Secretary for the NAC Ad Hoc Task Force on STEM Education, NASA Headquarters, Washington, DC 20546, 202–358–0212, or *beverly.e.girten@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 844–467–6272 or toll access number 720–259–6462, and then the numeric participant passcode: 329152 followed by the # sign. To join via WebEx on March 24, the link is *https://nasa.webex.com/,* the meeting number is 993 607 814 and the password is Educate1! (Password is case sensitive).

Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair
—Discussion of Observations Presented to NAC
—Plans to Implement Observations
—Office of Education Organization Update
—Future Topics
—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–04428 Filed 2–29–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0040]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 2, 2016, to February 12, 2016. The last biweekly notice was published on February 16, 2016.

DATES: Comments must be filed by March 31, 2016. A request for a hearing must be filed by May 2, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0040. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0040 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0040.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0040, facility name, unit number(s), application date, and subject in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in

§ 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 2, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this

section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 2, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social

security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, Inc., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of amendment request: November 2, 2015, as supplemented by letter dated December 22, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15307A069 and ML15356A481, respectively.

Description of amendment request: The proposed amendment would revise the reactor coolant system (RCS) pressure and temperature (P/T) limits by replacing Technical Specification (TS) Section 3.4.3, ''RCS Pressure and Temperature (P/T) Limits,'' Figures 3.4.3–1 and 3.4.3–2, with figures that are applicable up to 50 effective full power years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed RCS P/T limits are based on NRC-approved methodology and will continue to maintain appropriate limits for the HBRSEP2 RCS up to 50 EFPY. These changes provide appropriate limits for pressure and temperature during heatup and cooldown of the RCS, thus ensuring that the probability of RCS failure is maintained acceptably low. These limits are not directly related to the consequences of accidents.

Therefore, the proposed amendment does not result in an increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

Response: No.

The proposed changes will continue to ensure that the RCS will be maintained within appropriate pressure and temperature limits during heatup and cooldown. No physical changes to the HBRSEP2 systems, structures, or components are being implemented. There are no new or different accident initiators or sequences being created by the proposed Technical Specifications changes.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed changes ensure that the margin of safety for the fission product barriers protected by these functions will continue to be maintained. This conclusion is based on use of the applicable NRC-approved methodology for developing and establishing the proposed RCS P/T limits.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC, 28202.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc. (ENO), Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAF), Oswego County, New York

Date of amendment request: January 15, 2016. A publicly-available version is in ADAMS under Accession No. ML16015A456.

Description of amendment request: The licensee has provided a formal notification to the NRC of the intention to permanently cease power operations of JAF at the end of the current operating cycle. Once certifications for permanent cessation of operation and permanent removal of fuel from the reactor are submitted to the NRC, certain staffing and training Technical Specifications (TSs) administrative controls will no longer be applicable or appropriate for the permanently defueled condition. Therefore, ENO is requesting approval of changes to the staffing and training requirements in Section 5.0, Administrative Controls, of the JAF TSs. Specifically, the amendment would revise and remove certain requirements in TS Sections 5.1, ''Responsibility,'' 5.2, ''Organization,'' and 5.3, ''Plant Staff Qualifications.'' The proposed amendment would not be effective until the certification of permanent cessation of operation and certification of permanent removal of fuel from the reactor vessel are submitted to the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC staff revisions provided in [brackets], which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would not take effect until JAF has permanently ceased operation and entered a permanently defueled condition. The proposed amendment would modify the JAF TS by deleting the portions of the TS that are no longer applicable to a permanently defueled facility, while modifying the other sections to correspond to the permanently defueled condition.

The deletion and modification of provisions of the administrative controls do not directly affect the design of structures, systems, and components (SSCs) necessary for safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the fuel pool. The changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe management of irradiated fuel or the permanently shutdown and defueled condition of the reactor.

In a permanently defueled condition, the only credible accident is the fuel handling accident [(FHA)].

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated

accidents associated with reactor operation is no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The administrative removal of or modifications of the TS that are related only to administration of facility cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled and JAF will no longer be authorized to operate the reactor.

The proposed deletion of requirements of the JAF TS do not affect systems credited in the accident analysis for the [FHA] at JAF. The proposed TS will continue to require proper control and monitoring of safety significant parameters and activities.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (fuel cladding and spent fuel cooling). Since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR part 50 license for JAF will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel once the certifications required by 10 CFR 50.82(a)(1) are submitted, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The only remaining credible accident is a [FHA]. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the FHA.

The proposed changes are limited to those portions of the [TS] that are not related to the safe storage of irradiated fuel. The requirements that are proposed to be revised or deleted from the JAF [TS] are not credited in the existing accident analysis for the remaining applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated DBAs [Design Basis Accidents] involving the reactor are no longer possible because the reactor will be permanently shutdown and defueled and JAF will no longer be authorized to operate the reactor.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Travis L. Tate.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of amendment request: September 15, 2015. A publicly-available version is in ADAMS under Accession No. ML15259A042.

Description of amendment request: The amendment would revise the GGNS Technical Specifications (TSs) to eliminate the ''Inservice Testing [IST] Program,'' specification in Section 5.5, ''Programs and Manuals,'' which is superseded by Code Case OMN–20. A new defined term, ''Inservice Testing Program,'' would be added to TS Section 1.1, ''Definitions.'' This request is consistent with TS Task Force (TSTF)-545, Revision 1, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in [brackets]:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' by eliminating the ''Inservice Testing Program'' specification. Requirements in the IST program are removed, as they are duplicative of requirements in the ASME OM Code [American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' Other requirements in the Section 5.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f). The proposed change also revises the SR Section 3.0, ''SR Applicability,'' Bases to explain the application of the usage rules to the Section 5.5 testing requirements.

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test periods under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing periods greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing period extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

The proposed [changes to the] SR 3.0 Bases clarify the appropriate application of the existing TS requirements. Since the proposed change does not significantly affect system Operability, the proposed change will have no significant effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered. The proposed Bases change does not change the Operability requirements for plant systems or the actions taken when plant systems are not operable. The proposed Bases change clarifies the current application of the specifications.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with periods greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing period extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing period, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety. The proposed changes to the SR 3.0 Bases clarify the application of the existing TS requirements and, as a result, have no significant effect on a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: December 23, 2015. A publicly-available version is in ADAMS under Accession No. ML15357A250.

Description of amendment request: The amendments would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.10.1, to expand its scope to include provisions for temperature excursions greater than 212 degrees Fahrenheit (°F) as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. The proposed change is based on NRC-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–484, Revision 0, ''Use of TS 3.10.1 for Scram Time Testing Activities.''

The NRC staff issued a Notice of Availability for TSTF–484 in the **Federal Register** on October 27, 2006 (71 FR 63050). The staff also issued a **Federal Register** notice on August 21, 2006 (71 FR 48561) that provided a model safety evaluation and a model no significant hazards consideration (NSHC) determination that licensees could reference in their plant-specific applications. In its application dated December 23, 2015, the licensee affirmed the applicability of the model NSHC determination for PBAPS, Units 2 and 3.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

Technical Specifications currently allow for operation at greater than 212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: December 14, 2015. A publicly-available version is in ADAMS under Accession No. ML15348A224.

Description of amendment request: The amendment proposes to revise the technical specifications to increase the minimum required fuel oil in each standby diesel generator (DG) fuel oil day tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not increase the probability or the consequences of an accident previously evaluated. The DGs and

their associated emergency buses function to mitigate accidents. The proposed change does not involve a change in the operational limits or the design of the electrical power systems, change the function or operation of plant equipment, or affect the response of that equipment when called upon to operate.

The proposed change to TS SR 3.8.1.4 confirms the minimum supply of fuel oil in each DG fuel oil day tank. The minimum value for the affected parameter is being increased in the conservative direction and assures the DGs' ability to fulfill their safety function.

Therefore, based on the discussion above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a change in the operational limits or the design capabilities of the electrical power systems. The proposed change does not alter the function or operation of plant equipment or introduce any new failure mechanisms. The evaluation that supports this request included a review of the DG fuel oil system to which this parameter applies.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margins of safety are related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment systems. Since the proposed change does not adversely affect the operation of any plant equipment, including equipment credited in protecting the fission product barriers, operation in the proposed manner will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Justin C. Poole.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit No. 1, Washington County, Nebraska

Date of amendment request: August 31, 2015, as superseded by letter dated December 23, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15243A167 and ML15363A042, respectively.

Description of amendment request: The licensee proposes to revise the FCS Updated Safety Analysis Report (USAR) to change the structural design methodology for Class I structures at FCS to use American Concrete Institute (ACI) ultimate strength requirements, with the exception of the containment structure (cylinder, dome, and base mat), the spent fuel pool, and the foundation mats. No change to the current licensing basis code of record is proposed for the excepted structures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This LAR [license amendment request] revises the methodology used to design new or re-evaluate existing Class I structures other than the containment structure (cylinder, dome, and base mat), the spent fuel pool (SFP), and the foundation mats. These structures will continue to utilize the current license basis and thus are not affected by this change. The proposed change allows other Class I structures to apply the ultimate strength design (USD) method from the ACI 318–63 Code for normal operating/service load combinations.

The ACI USD method is an accepted industry standard used for the design and analysis of reinforced concrete. A change in the methodology that an analysis uses to verify structure qualifications does not have any impact on the probability of accidents previously evaluated. Designs performed with the ACI USD method will continue to demonstrate that the Class I structures meet industry accepted ACI Code requirements. This LAR does not propose changes to the no loss-of-function loads, loading combinations, or required ultimate strength capacity.

Calculations that apply the limit design method and use dynamic increase factors (DIF) of ACI 349–97, Appendix C will demonstrate that the concrete structures meet required design criteria. Therefore, these proposed changes will not pose a significant increase in the probability or consequences of an accident previously evaluated.

The use of actual concrete strength based on original test data for the areas identified in Section 2.2 of this document and the use of 10% higher steel yield strength for the reactor cavity and compartment (RC&C) and containment internal structures (CIS) maintain adequate structural capacity. As such, these proposed changes do not pose a significant increase in the probability or consequences of an accident previously evaluated because the revised strength values are determined based on actual original test data using a high level of confidence.

The controlled hydrostatic load is changed from live load to dead load for ultimate strength design in the definition. This is consistent with ACI–349–97 and therefore does not pose a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This LAR proposes no physical change to any plant system, structure, or component (SSC). Similarly, no changes to plant operating practices, operating procedures, computer firmware, or computer software are proposed. This LAR does not propose changes to the design loads used to design Class I structures. Application of the new methodology to the design or evaluation of Class I structures will continue to ensure that those structures will adequately house and protect equipment important to safety.

Calculations that use the ACI USD method for normal operating/service load combinations will continue to demonstrate that the concrete structures meet required design criteria. Calculations that apply the limit design method and use dynamic increase factors (DIF) of ACI 349–97, Appendix C will demonstrate that the concrete structures meet required design criteria. Use of the actual compressive strength of concrete based on 28-day test data (not age hardening) is permitted by the ACI 318–63 Code and ensures that the concrete structure is capable of performing its design function without alteration or compensatory actions of any kind. A 10% higher steel yield has minimal reduction on design margin for the RC&C or the CIS. The controlled hydrostatic load is changed from live load to dead load for ultimate strength design in the definition which is consistent with ACI–349–97.

The use of these alternative methodologies for qualifying Class I structures does not have a negative impact on the ability of the structure or its components to house and protect equipment important to safety and thus, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is for the design of new or re-analysis of existing Class I structures with the exception of the containment structure, the spent fuel pool, and the foundation mats for which no change to the current licensing basis (CLB) is proposed.

Utilization of the ACI 318–63 Code USD method applies only to the normal operating/service load cases and is already part of the CLB for no loss-of-function load cases. No changes to design basis loads are proposed;

therefore, new designs or re-evaluations of existing Class I structures shall still prove capable of coping with design basis loads.

Use of the actual compressive strength of concrete based on 28-day test data (not age hardening) is justified and further constrained by limiting its application to areas where the concrete is not exposed to harsh conditions. ACI 349–97, Appendix C is an accepted design code used in the nuclear industry. Calculations using DIFs per ACI 349–97, Appendix C must demonstrate that the Class I structures continue to meet an appropriate design code widely used in the nuclear industry. The use of a 10% higher steel yield was conservatively derived from original test data and has minimal reduction on design margin for the RC&C or the CIS. The controlled hydrostatic load is changed from live load to dead load for ultimate strength design in the definition which is consistent with ACI–349–97.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: December 31, 2015. A publicly-available version is in ADAMS under Accession No. ML15365A595.

Description of amendment request: The amendment would revise License Condition 2.C(4) to permit the use of the Fuel Rod Performance and Design 4 Thermal Conductivity Degradation (PAD4TCD) computer program for the second cycle of plant operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff revisions provided in [brackets]:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The Emergency Core Cooling System (ECCS) response to a large break Loss-of-Coolant Accident (LOCA) as described in the WBN Unit 2 Final Safety Analysis Report (FSAR) Chapter 15 incorporated an explicit evaluation of the effects of Thermal Conductivity Degradation (TCD). The FSAR evaluation considered fuel burn-up values that represent multi-cycle cores where the effects of TCD would be more evident. These analyses showed that the calculated peak clad temperature was 1776 °F [degrees Fahrenheit] which provides a large margin to the regulatory limit specified in 10 CFR 50.46 of 2200 °F.

The change to License Condition 2.C(4) does not change the safety analysis or any plant feature or design. Thus it is concluded that a significant increase in the consequences of an accident previously evaluated will not occur as a result of the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to [L]icense [C]ondition 2.C(4) does not change or modify the plant design, introduce any new modes of plant operation, change or modify the design of the ECCS, or change or modify the accident analyses presented in the WBN Unit 2 FSAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The safety analyses for WBN Unit 2 described in the FSAR have explicitly accounted for the potential effects of TCD where applicable. The results of these analyses have established that WBN Unit 2 can operate safely and in the unlikely event that a design basis event occurs, there are large margins to the regulatory limits explicitly accounting for TCD. This proposed change to License Condition 2.C(4) does not change these analyses or conclusions.

Thus, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A–K, Knoxville, Tennessee 37902.

NRC Branch Chief: Benjamin G. Beasley.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2 (NAPS), Louisa County, Virginia

Date of amendment request: December 10, 2015. A publicly-available version is in ADAMS under Accession No. ML15352A108.

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) 3.2.1, ''Heat Flux Hot Channel Factor $F_Q(Z)$).'' Specifically, by relocating required operating space reductions (Power and Axial Flux Difference) to the Core Operating Limits Report, accompanied by verification for each reload cycle; and by defining TS surveillance requirements for steady-state and transient $F_Q(Z)$ and corresponding actions with which to apply an appropriate penalty factor to measured results as identified in Westinghouse documents NSAL–09–5, Rev. 1 and NSAL–15–1, Rev. 0 respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change for resolution of Westinghouse notification documents NSAL–09–05, Rev. 1 and NSAL–15–1, Rev. 0 is intended to address deficiencies identified within the existing NAPS Technical Specifications and to return them to their as-designed function. Operation in accordance with the revised TS ensures that the assumptions for initial conditions of key parameter values in the safety analyses remain valid and does not result in actions that would increase the probability or consequences of any accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation in accordance with the revised TS and its limits precludes new challenges to [structures, systems and components (SSCs)] that might introduce a new type of accident. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The proposed change for resolution of Westinghouse notification documents NSAL–09–5, Rev. 1 and NSAL–15–1, Rev. 0 does not involve the alteration of plant equipment or

introduce unique operational modes or accident precursors. It thus does not create the potential for a different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation in accordance with the revised TS and its limits preserves the margins assumed in the initial conditions for key parameters assumed in the safety analysis. This ensures that all design and performance criteria associated with the safety analysis will continue to be met and that the margin of safety is not affected.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Michael T. Markley.

ZionSolutions, LLC. (ZS), Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station (ZNPS), Units 1 and 2, Lake County, Illinois

Date of amendment request: January 7, 2016. A publicly-available version is in ADAMS under Accession No. ML16008B080.

Description of amendment request: The amendment would approve a revision to the ZNPS Defueled Station Emergency Plan (DSEP) to implement an Independent Spent Fuel Storage Installation (ISFSI)-Only emergency plan. The major proposed changes to the DSEP include the removal of non-ISFSI related emergency event types; transfer of responsibility for implementing the emergency plan to ISFSI Management, and a revised emergency plan organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

ZS has, in effect, an NRC-approved emergency plan. The credible accidents involving the ISFSI and [Modular Advanced Generation Nuclear All-Purpose Storage System (MAGNASTOR)] system have been analyzed and determined that none result in doses to the public beyond the owner-controlled boundary (Figure 2–2 of the emergency plan) that would exceed the [U.S. Environmental Protection Agency Protective Action Guides (EPA PAGs)]. These analyses have not changed. With decommissioning completed, the ZNPS site-related accidents previously analyzed are no longer credible.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident from any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

ZS has, in effect, an NRC-approved emergency plan. The credible accidents involving the ISFSI and MAGNASTOR system have been analyzed and determined that none result in doses to the public beyond the owner-controlled boundary that would exceed the EPA PAGs. With decommissioning substantially completed (Safe Transition to an ISFSI only [emergency plan] is contingent on reducing plant side curie content to a level where a credible scenario no longer exists which could trigger a plant side Emergency Action Level (EAL) Threshold Value. Safe Transition will be a bounding number based on a calculated value of plant side curie inventory and will occur prior to the completion of decommissioning sometime in late 2016 or early 2017); the ZNPS site accidents previously analyzed are no longer credible. Accidents associated with the ISFSI are addressed in the MAGNASTOR [Final Safety Analysis Report (FSAR)].

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the ability of the fission product barriers (fuel cladding, primary containment) to perform their design functions during and following postulated accidents. ZS has, in effect, an NRC-approved emergency plan. The credible accidents involving the ISFSI and MAGNASTOR system have been analyzed and determined that none result in doses to the public beyond the owner-controlled boundary that would exceed the EPA PAGs. With spent fuel located at the ISFSI and decommissioning substantially completed, the ZNPS plant-related accidents previously analyzed are no longer credible.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Russ Workman, Deputy General Counsel, EnergySolutions, 423 West 300 South, Suite 200, Salt Lake City, UT 84101.

NRC Branch Chief: Bruce A. Watson, CHP.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket No. 50–369, McGuire Nuclear Station, Unit 1, Mecklenburg County, North Carolina

Date of amendment request: August 28, 2015, as supplemented by letter dated November 13, 2015.

Brief description of amendment: The amendment provides a temporary

extension to the Completion Time for Technical Specification 3.5.2, ''ECCS [Emergency Core Cooling Systems]—Operating,'' Condition A. The temporary extension will be used to allow the licensee to effect an on-line repair of the Residual Heat Removal (RHR) pump motor air handling unit.

Date of issuance: February 3, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 281. A publicly-available version is in ADAMS under Accession No. ML16004A352; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License No. NPF–9: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* October 27, 2015 (80 FR 65810). The supplemental letter dated November 13, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 2016.

No significant hazards consideration comments received: No.

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: February 19, 2015, as supplemented by letter dated November 5, 2015.

Description of amendment request: The amendments revised (1) technical specifications (TSs) by replacing AREVA Topical Report ANP–10298PA, ''ACE/ATRIUM 10XM Critical Power Correlation,'' Revision 0, March 2010, with Revision 1, March 2014, of the same topical report; and (2) Appendix B, ''Additional Conditions,'' by removing the license condition issued by Amendment Nos. 262 and 290 for Units 1 and Unit 2, respectively.

Date of issuance: February 9, 2016.

Effective date: Once approved, the Unit 1 amendment shall be implemented prior to start-up from the 2016 Unit 1 refueling outage, and the Unit 2 amendment shall be implemented prior to start-up from the 2017 Unit 2 refueling outage.

Amendment Nos.: 269 and 297. A publicly-available version is in ADAMS under Accession No. ML16019A029; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–71, and DPR–62: Amendments revised the renewed facility operating licenses and TSs.

Date of initial notice in ***Federal Register****:* April 28, 2015 (80 FR 23603). The supplemental letter dated November 5, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 2016.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station (CGS), Benton County, Washington

Date of application for amendment: August 12, 2014, as supplemented by letters dated September 4, 2014, and April 3 and August 11, 2015.

Brief description of amendment: The amendment revised the CGS Technical Specifications (TSs) to risk-inform requirements regarding selected Required Actions end states by incorporating Technical Specification Task Force (TSTF) Change Traveler TSTF–423, Revision 1, ''Technical Specification End States, NEDC–32988–A.'' The Notice of Availability for TSTF–423, Revision 1, was published in the **Federal Register** on February 18, 2011 (76 FR 9164).

Date of issuance: February 3, 2016.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 236. A publicly-available version is in ADAMS under Accession No. ML15216A266; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and TSs.

Date of initial notice in ***Federal Register****:* November 12, 2014 (79 FR 67200). The supplemental letters dated April 3 and August 11, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket No. 50–277, Peach Bottom Atomic Power Station (PBAPS), Unit 2, York and Lancaster Counties, Pennsylvania

Date amendment request: December 5, 2014, as supplemented by letter dated April 30, 2015.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to the Safety Limit Minimum Critical Power Ratios. The changes resulted from a cycle-specific analysis performed to support the operation of PBAPS, Unit 2, in the current Cycle 21. The re-analysis was performed to accommodate operation in the Maximum Extended Load Line Limit Analysis Plus (MELLLA+) operating domain based on a separate license amendment request dated September 4, 2014.

Date of issuance: February 8, 2016.

Effective date: As of the date of issuance, and shall be implemented prior to operation in the MELLLA+ operating domain.

Amendment No.: 304. A publicly-available version is in ADAMS under Accession No. ML15343A165; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–44: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register****:* March 3, 2015 (80 FR 11495). The supplemental letter dated April 30, 2015, provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket No. 50–278, Peach Bottom Atomic Power Station (PBAPS), Unit 3, York and Lancaster Counties, Pennsylvania

Date amendment request: April 30, 2015, as supplemented by letter dated August 6, 2015.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to the Safety Limit Minimum Critical Power Ratios. The changes resulted from a cycle-specific analysis performed to support the operation of PBAPS, Unit 3, in the current Cycle 21. The re-analysis was performed to accommodate operation in the Maximum Extended Load Line Limit Analysis Plus (MELLLA+) operating domain based on a separate license amendment request dated September 4, 2014.

Date of issuance: February 8, 2016.

Effective date: As of the date of issuance, and shall be implemented prior to operation in the MELLLA+ operating domain.

Amendment No.: 308. A publicly-available version is in ADAMS under Accession No. ML15343A177; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–56: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register****:* July 7, 2015 (80 FR 38773). The supplemental letter dated August 6, 2015, provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: July 30, 2014, and supplemented by letters dated December 12, 2014, and July 20, 2015.

Description of amendment: The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (USFAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2* information. The proposed amendment would allow changes to correct editorial errors and promote consistency with the UFSAR Tier 1 and 2 information.

Date of issuance: February 1, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 45. A publicly-available version is in ADAMS under Accession No. ML15335A060; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register****:* September 30, 2014 (79 FR 58812). The supplemental letters dated December 12, 2014, and July 20, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated February 1, 2016.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of amendment request: March 6, 2015, as supplemented by letter dated July 7, 2015.

Brief description of amendment: The amendment revised the Technical Specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) numeric values. The change decreased the numeric values of SLMCPR in TS Section 2.1.1.2 for single and two reactor recirculation loop operation based on the Cycle 18 SLMCPR evaluation.

Date of issuance: February 9, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 279. A publicly-available version is in ADAMS under Accession No. ML15317A478; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–68: Amendment revised the Facility Operating License and TS.

Date of initial notice in ***Federal Register****:* July 7, 2015 (80 FR 38777). The supplemental letter dated July 7, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 2016.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 9, 2015, as supplemented by letters dated April 8, August 12, and December 10, 2015.

Brief description of amendment: The amendment revised Technical Specification (TS) requirements regarding steam generator tube inspections and reporting as described in TS Task Force (TSTF) traveler TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection,'' with some minor administrative differences.

Date of issuance: February 2, 2016.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 215. A publicly-available version is in ADAMS under Accession No. ML15324A114; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–30: The amendment revised the Operating License and TSs.

Date of initial notice in ***Federal Register****:* June 9, 2015 (80 FR 32630). The supplemental letters dated August 12 and December 10, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 2016.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of amendment request: May 4, 2015, as supplemented by letter dated August 5, 2015.

Description of amendment request: The proposed amendments authorize modification of the Emergency Action Level (EAL) Technical Basis Document, EAL RA2.1, to revise the instrumentation used to classify an event under this EAL. Specifically, this would correct the equipment identification number from the ''GW–RI–178–1 Process Vent Normal Range'' monitor to the ''VG–RI–180–1 Vent Stack 'B' Normal Range'' monitor for Initiating Condition RA2, EAL RA2.1.

Date of issuance: January 21, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 277 and 259. A publicly-available version is in ADAMS under Accession No. ML15307A300; documents related to these amendments are listed in the Safety Evaluation enclosed with these amendments.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses.

Date of initial notice in ***Federal Register****:* July 7, 2015 (80 FR 38764). The supplemental letter dated August 5, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 21, 2016.

No significant hazards consideration comments received: Yes.

Dated at Rockville, Maryland, this 22nd day of February 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–04346 Filed 2–29–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0043]

Clarification of Compensatory Measure Requirements for Physical Protection Program Deficiencies

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS) entitled, RIS 2016–XX, ''Clarification on the Implementation of Compensatory Measures for Protective Strategy Deficiencies or Degraded or Inoperable Security Systems, Equipment, or Components.'' The NRC intends to issue this RIS to remind licensees of the requirement to implement compensatory measures, supported by a site-specific analysis, to ensure that licensees maintain, at all times, the capability to detect, assess, interdict, and neutralize threats as identified in NRC regulations. Compensatory measures must be implemented for degraded or inoperable security systems, equipment, or components, and for protective strategy deficiencies identified during performance evaluation exercises and drills.

DATES: Submit comments by March 31, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Daniel Cardenas, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0756; email: *Daniel.Cardenas@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0043 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0043.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. This RIS is available under ADAMS Accession No. ML15040A596.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0043 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly

disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The Commission directed the NRC staff in Staff Requirements Memorandum (SRM) ''COMGEA/COMWCO–14–0001—Proposed Initiative to Conduct a Lessons Learned Review of the NRC's Force-on-Force Inspection Program'' (ADAMS Accession No. ML14043A063) to conduct a lessons-learned review of the NRC's force-on-force inspection program. Through this review, the NRC staff identified that, in certain cases, licensees have implemented immediate compensatory measures where such measures are not required by NRC regulations and guidance. The NRC staff identified proposed enhancements to the force-on-force inspection program and communicated these to the Commission in SECY–14–0088, ''Proposed Options to Address Lessons-Learned Review of the U.S. Nuclear Regulatory Commission's Force-on-Force Inspection Program in Response to Staff Requirements Memorandum—COMGEA/COMWCO–14–001'' (ADAMS Accession No. ML14139A231).

One of the proposed enhancements was to issue a generic communication to licensees clarifying when compensatory measures must be immediately implemented. In SRM–SECY–14–0088, ''Proposed Options to Address Lessons Learned Review of the NRC's Force-on-Force Inspection Program in Response to Staff Requirements—COMGEA/COMWCO–14–0001'' (ADAMS Accession No. ML14353A433), the Commission directed the staff to issue a proposed generic communication to clarify the NRC's expectations regarding the implementation of compensatory measures. Therefore, the NRC is issuing a draft RIS to communicate with stakeholders on this matter.

The intent of this RIS is to remind addressees of the requirement for implementation of compensatory measures, supported by a site-specific analysis, to ensure that their physical protection program maintains, at all times, the capability to detect, assess, interdict, and neutralize threats, as identified in Section 73.1, ''Purpose and Scope,'' of title 10 of the *Code of Federal Regulations* (10 CFR). Compensatory measures must be implemented for degraded or inoperable security systems, equipment, or components, and for protective strategy deficiencies identified during performance evaluation exercises and drills. Licensees should use a site-specific analysis, based on all available information, to determine the specific timeframes and measures to compensate for protective strategy deficiencies, or degraded or inoperable security equipment, systems, or components.

III. Proposed Action

The NRC is requesting public comments on the draft RIS 2016–XX. The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 24th day of February 2016.

For the Nuclear Regulatory Commission.

J. Todd Keene,

Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–04347 Filed 2–29–16; 8:45 am]

BILLING CODE 7590–01–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 F–1, SEC File No. 270–249, OMB Control No. 3235–0258.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') this request for an extension of the previously approved collection of information discussed below.

Form F–1 (17 CFR 239.31) is the form used by foreign private issuers to register the offer and sale of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) when no other form is authorized or prescribed. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–1 takes approximately 1,709 hours per response and is filed by approximately 63 respondents. We estimate that 25% of the 1,709 hours per response (427.25 hours) is prepared by the registrant for a total annual reporting burden of 26,917 hours (427.25 hours per response × 63 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04440 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77226; File No. SR–NASDAQ–2016–023]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rules 4702 and 4703

February 24, 2016,

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 February 10, 2016, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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

The Exchange proposes to a proposed [sic] rule change to amend Rule 4702(b)(9)(B) to harmonize the processing of Orders with a Pegging Attribute or that are designated for routing, which are eligible to participate in the Opening Cross. The Exchange is also proposing to make minor technical corrections to Rules 4702 and 4703.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Rule 4702(b) concerns NASDAQ's Order Types [3] and provides a description of the various Order Attributes [4] available to NASDAQ Participants.[5] NASDAQ is proposing to harmonize treatment of Orders with a Pegging Order Attribute and Orders that are designated for routing pursuant to Rule 4758(a) (''Routable Orders'') entered between 9:28 a.m. ET and initiation of the NASDAQ Opening Cross.[6] The Exchange is also making minor technical corrections to Rules 4702 and 4703.

All Order Types, except Supplemental Orders,[7] participate in the Opening Cross if the Order has a Time-in-Force [8] that would cause it to be active at the time of the Opening Cross.[9] Time-in-Force is an Order Attribute [10] selected by the Participant that provides the period of time that the NASDAQ System [11] will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. If the Participant enters an Order for participation in the Opening Cross [12] prior to completion thereof and with a Time-in-Force that continues after the time of the Opening Cross, the Order will participate in the Opening Cross like an LOO Order,[13] while operating thereafter (if unexecuted) in accordance with its designated Order Type and Order Attributes (if not executed in full in the NASDAQ Opening Cross, held by the System as discussed below, or cancelled by the Participant). Such an Order may be referred to as an ''Opening Cross/Market Hours Order.''

In addition to a Time-in-Force, an Order may have other Attributes associated with it, such as price, size, eligibility to participate in the NASDAQ Opening and Closing Crosses, Pegging, and whether the Order is Routable.[14] An Order that is designated as Routable [15] employs one of several Routing Options described in Rule 4758(a)(1)(A). Routable Day Orders eligible to participate in the Opening Cross that are entered into the System prior to 9:28 a.m. ET are added to the NASDAQ book as they were entered by the Participant (*i.e.,* Order Type and Order Attributes).[16] If such an Order has a Time-in-Force that will allow it to continue after completion of the Opening Cross and the Order was not executed fully in the Cross, the order will be entered into the NASDAQ book for participation in Market Hours [17] trading.

An Order may have a Pegging Attribute. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if NASDAQ is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Pegging will be set with reference to the highest bid or lowest offer disseminated by a market center other than NASDAQ.[18]

There are three varieties of Pegging; Primary, Market, and Midpoint. Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer. NASDAQ also has a Market Maker Peg Order, which is an Order Type designed to assist a Market Maker in maintaining a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).[19] Pegging is available only during Market Hours. Orders with a Pegging Attribute entered into the System prior to 9:28 a.m. ET are rejected, unless the Order is a Market Maker Peg Order or a Market Peg Order designated to participate in the Opening Cross.

[3] The term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the NASDAQ Market Center by a Participant. An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the NASDAQ Book when submitted to NASDAQ. An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the NASDAQ Book when submitted to NASDAQ. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *See* Rule 4701(e).

[4] *Id.*

[5] *See* Rule 4701(c).

[6] *See* Rule 4752 for a description of NASDAQ's opening process, including the Opening Cross.

[7] A Supplemental Order is an Order Type with a Non-Display Order Attribute that is held on the NASDAQ Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). *See* Rule 4702(b)(6)(A).

[8] *See* Rule 4703(a).

[9] As described in Rule 4703(l), Market On Open (''MOO'') Orders, Limit On Open (''LOO'') Orders, and Opening Imbalance Only (''OIO'') Orders participate in the NASDAQ Opening Cross in the manner specified in Rule 4752. Other order types eligible to participate in the Opening Cross operate as ''Market Hours Orders'' or ''Open Eligible Interest'' as specified in Rule 4752. Rule 4703(l), also notes that Supplemental Orders, Retail Orders, and RPI Orders are ineligible to participate in the Opening Cross. As discussed herein, the Exchange is deleting references to Retail Orders and RPI Orders since they are no longer available on NASDAQ.

[10] *See* Rule 4701(e).

[11] As defined by Rule 4701(a).

[12] An Order may be designated by a Participant for participation in the Opening Cross by adding a ''flag'' to the order, or an Order may participate in the Opening Cross without such a flag if, by its nature, must participate (*e.g.,* LOO Order).

[13] *See* Rule 4702(b)(9).

[14] *See* Rule 4703.

[15] *See* Rule 4703(f) for a description of the Routing Order Attribute.

[16] Any Order with a Pegging Order Attribute entered prior to 9:28 a.m. ET, other than a Market Pegging designated for participation in the Opening Cross, is not accepted by the System. *See* Rule 4703(d) for a discussion of Pegging.

[17] *See* Rule 4701(g).

[18] *See* Rule 4703(d).

[19] *See* Rule 4702(a)(7) [sic]. A Market Maker Peg Order may be entered through RASH, FIX or QIX only.

Opening Cross/Market Hours Orders entered into the System at 9:28 a.m. ET up to initiation of the Opening Cross (the ''Late Period'') are designated as ''Late Market Hours Orders,'' [20] which are handled differently than Orders entered prior to the Late Period. Under the current rule, an Opening Cross/Market Hours Order that is entered during the Late Period will be (i) held and entered into the System after the completion of the NASDAQ Opening Cross if it has been assigned a Pegging Attribute or Routing Attribute, (ii) treated as an ''Opening Imbalance Only Orders [sic]'' or ''OIO Orders [sic]'' [21] for the purposes of the Opening Cross and, if not executed in full, entered into the System after the completion of the NASDAQ Opening Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute or Routing Attribute, or (iii) treated as an OIO Order and cancelled after the NASDAQ Opening Cross if entered through OUCH or FLITE.[22] An Opening Cross/Market Hours Order entered through RASH or FIX after the time of the NASDAQ Opening Cross will be accepted but the NASDAQ Opening Cross flag will be ignored. A Routable Order flagged to participate in the NASDAQ Opening Cross with a Time-in-Force other than IOC and entered at or after 9:28 a.m. will be held and entered into the System after the NASDAQ Opening Cross. All other LOO Orders and Opening Cross/Market Hours Orders entered at or after 9:28 a.m. will be rejected.

Proposed Changes

The Exchange is proposing to make two changes to how it handles Opening Cross/Market Hours Order entered into the System during the Late Period. Currently, the Exchange will hold Orders entered during the Late Period that have been assigned certain Pegging and Routing Attributes and enter them into the System after the completion of the Opening Cross,[23] while it will reject Orders entered during the Late Period with certain other Pegging and Routing Attributes. As discussed below, Opening Cross/Market Hours Orders entered into the System during the Late Period that have a Pegging Attribute or Routing Attribute are held and entered into the System after the completion of the Opening Cross with the exception of Orders with a Primary or Midpoint Pegging Attribute, which are instead rejected by the System, or Orders with a DOT or LIST Routing Attribute, which are instead converted by the System to an OIO Order.[24]

First, the Exchange is proposing to harmonize how it handles Opening Cross/Market Hours Orders entered into the System during the Late Period that have a Pegging Attribute. As noted above, the Exchange will hold an Order entered into the System during the Late Period that has been assigned a Market Pegging Attribute and will enter it into the System after the completion of the Opening Cross. The Exchange is proposing to instead reject all Orders with a Market, Midpoint, or Primary Pegging attribute.[25] The Exchange notes that a Market Pegged Order entered during the Late Period is the only type of Order with a Pegging Attribute currently held by the System until after completion of the Opening Cross. Primary Pegged and Midpoint Pegged Orders entered during the Late Period are currently rejected. NASDAQ is proposing to harmonize the treatment of Market, Midpoint, or Primary Pegged Orders entered during the Late Period by rejecting any such Order. As a consequence, the Exchange is amending Rule 4702(b)(9) to reflect that an Order with a Market, Midpoint, or Primary Pegging Attribute entered during the Late Period will be rejected.

Second, the Exchange is proposing to harmonize how all Routable Orders entered during the Late Period that are eligible to participate in the Opening Cross are handled. Currently, any Order employing a DOT [26] or LIST [27] Routing Option that is eligible to participate in the Opening Cross and that is entered into the System during the Late Period is either sent to the appropriate primary listing market for participation in that market's opening process or, in the case of securities whose primary listing market is NASDAQ or another market not supported by DOT, converted by the System to OIO Order.[28] If such a converted Routable Order does not execute in the Opening Cross, then it reverts back to the Order Type as was entered by the Participant for participation in Market Hours trading. By contrast, an Order employing any of the other Routing Options under Rule 4758(a)(1)(A) that is eligible to participate in the Opening Cross and that is entered into the System during the Late Period is held by the System until completion of the Opening Cross and thereafter is added to the continuous order book for Market Hours trading, consistent with the Order Type and Attributes, which is consistent with the current rule as discussed above. The Exchange is proposing to harmonize how all Routable Orders entered during the Late Period that are eligible to participate in the Opening Cross are handled by converting all such Orders into OIO Orders and, upon completion of the Opening Cross, converting any such Order that is not fully executed back to its original Order Type and Attributes.[29]

Last, the Exchange is making technical corrections to Rules 4702 and 4703 to remove references to Retail Orders and RPI Orders, which were erroneously included in the rules when they were adopted.[30]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[20] *See* Rule 4752(a)(7).

[21] An OIO Order is an Order Type entered with a price that may be executed only in the Opening Cross and only against MOO Orders (Rule 4702(b)(8)), LOO Orders (Rule 4702(b)(9)), or Early Market Hours Orders (Rule 4752(a)(7)). *See* Rule 4702(b)(10).

[22] NASDAQ maintains several communications protocols for Participants to use in entering Orders and sending other messages to the NASDAQ Market Center. These are OUCH, RASH, QIX, and FLITE, which are NASDAQ proprietary protocols, and FIX, which is a non-proprietary protocol. *See http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs* for a description of the various order entry port specifications.

[23] The Exchange notes that the System will hold such an Order notwithstanding that the market participant flags the Order as eligible for participation in the Opening Cross.

[24] DOT and LIST Orders entered during the Late Period are sent to the Primary Listing Market for the security. If an Order in a NASDAQ-listed security is assigned a DOT or LIST Routing Attribute and entered into the System during the Late Period, the System will convert the Order to an OIO Order for participation in the Opening Cross.

[25] Market Maker Peg Orders entered during the Late Period are accepted and treated as OIO Orders for potential participation in the Opening Cross, and thereafter entered into the continuous book as a Market Maker Peg Order if not executed in full in the Opening Cross. The Exchange is proposing to add new text to Rule 4702(b)(9)(B) to make clear that Market Maker Peg Orders are not included as an Order that will be rejected by the System. The Exchange is not proposing to change how Market Maker Peg Orders are handled.

[26] DOT is a Routing Option that allows the entering firm to designate an Order for participation in the NYSE or NYSE MKT opening or closing processes. *See* Rule 4758(a)(1)(A)(i).

[27] LIST is a Routing Option designed to allow orders to participate in the opening and/or closing process of the primary listing market for a security. *See* Rule 4758(a)(1)(A)(x).

[28] An Order with a Market Pegging Attribute entered during the Late Period is rejected back to the Participant. In both scenarios, the Orders are not eligible to participate in the Opening Cross since Pegging is available only during Market Hours. *See* Rule 4703(d).

[29] An Order with a TIF of IOC would be canceled upon completion of the Opening Cross instead of being converted back to an IOC Order.

[30] Retail Orders and RPI Orders were part of the Retail Price Improvement Program under Rule 4780, which was eliminated. *See* Securities Exchange Act Release No. 75252 (June 22, 2015), 80 FR 36865 (June 26, 2015) (SR–NASDAQ–2015–024).

Section 6 of the Act,[31] in general, and further the objectives of Section 6(b)(5) of the Act,[32] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed changes promote just and equitable principles of trade and perfects the mechanisms of a free and open market and the national market system by providing greater clarity concerning the System's operation with respect to Pegged and Routable Orders during the Opening Cross process and how such orders with a Time-in-Force characteristic that allows them to trade during Market Hours are processed upon initiation of the Opening Cross.

The proposed change will contribute to the protection of investors and the public interest by bringing consistency to the processing of Orders in the Opening Cross, thereby avoiding any Participant confusion that may be caused by dissimilar treatment of Routable and Pegged Orders. With respect to Routable Orders, uniformly converting such Orders, which are designated to participate in the Opening Cross, is consistent with a Participant's intent to first potentially execute during the Opening Cross and, to the extent not fully executed, thereafter join Market Hours trading consistent with the Order Type and Routing Option employed, unless otherwise cancelled after the Opening Cross as discussed above.

With respect to Pegged Orders, uniformly canceling all Pegged Orders as described under Rule 4703(d) is consistent with the nature of a Pegged Order, which is only available during Market Hours. Further, these changes simplify the processing making it easier for all participants to understand how their orders behave with respect to the Opening Cross and thereafter. The proposed elimination of references to Retail Orders and RPI Orders will also serve to avoid potential Participant confusion arising from including references thereto in light of the elimination of the Retail Price Improvement Program.

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, as amended. Specifically, the change is designed to promote consistency in the treatment of Pegged and Routable Orders in the Opening Cross. Such a change does not place a burden on competition between market participants as the changes are applied consistently to all participants. Moreover, the proposed change does not impose a burden on competition among exchanges as they are done to clarify NASDAQ's rules and do not impact competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2016–023 and should be submitted on or before March 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04359 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78f.

[32] 15 U.S.C. 78f(b)(5).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; 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: Rule 10b–10, SEC File No. 270–389, OMB Control No. 3235–0444.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission

(''Commission'') is soliciting comments on the existing collection of information provided for in Rule 10b–10 (17 CFR 240.10b–10) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–10 requires broker-dealers to convey specified information to customers regarding their securities transactions. This information includes the date and time of the transaction, the identity and number of shares bought or sold, and whether the broker-dealer acts as agent for the customer or as principal for its own account. Depending on whether the broker-dealer acts as agent or principal, Rule 10b–10 requires the disclosure of commissions, as well as mark-up and mark-down information. For transactions in debt securities, Rule 10b–10 requires the disclosure of redemption and yield information. Rule 10b–10 potentially applies to all of the approximately 4,183 firms registered with the Commission that effect transactions for or with customers.

Based on information provided by registered broker-dealers to the Commission in FOCUS Reports, the Commission staff estimates that on average, registered broker-dealers process approximately 1,383,492,184 order tickets per month for transactions for or with customers. Each order ticket representing a transaction effected for or with a customer results in one confirmation. Therefore, the Commission staff estimates that approximately 16,601,906,208 confirmations are sent to customers annually. The confirmations required by Rule 10b–10 are generally processed through automated systems. It takes approximately 30 seconds to generate and send a confirmation. Accordingly, the Commission staff estimates that broker-dealers spend approximately 138,349,218 hours per year complying with Rule 10b–10.

The amount of confirmations sent and the cost of sending each confirmation varies from firm to firm. Smaller firms generally send fewer confirmations than larger firms because they effect fewer transactions. The Commission staff estimates the costs of producing and sending a paper confirmation, including postage, to be approximately 57 cents. The Commission staff also estimates that the cost of producing and sending a wholly electronic confirmation is approximately 39 cents. Based on informal discussions with industry participants, as well as representations made in requests for exemptive and no-action letters relating to Rule 10b–10, the staff estimates that broker-dealers used electronic confirmations for approximately 35 percent of transactions. Based on these calculations, Commission staff estimates that 10,791,239,035 paper confirmations are mailed each year at a cost of $6,151,006,250. Commission staff also estimates that 5,810,667,173 wholly electronic confirmations are sent each year at a cost of $2,266,160,197. Accordingly, Commission staff estimates that the total annual cost associated with generating and delivering to investors the information required under Rule 10b–10 would be $8,417,166,447.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the PRA unless it displays a currently valid OMB control number.

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: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04350 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; 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:

Rule 19b–4(e) and Form 19b–4(e); SEC File No. 270–447, OMB Control No. 3235–0504.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19b–4(e) (17 CFR 240.19b–4(e)) under the Securities Exchange Act of 1934 (15 U.S.C 78a *et seq.*) (the ''Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19b–4(e) permits a self-regulatory organization (''SRO'') to list and trade a new derivative securities product without submitting a proposed rule change pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), so long as such product meets the criteria of Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs, Rule 19b–4(e) requires an SRO to file a summary form, Form 19b–4(e), to notify the Commission when the SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission. Form 19b–4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not required to be submitted as a proposed rule change. In addition, Rule 19b–4(e) requires an SRO to maintain, on-site, a copy of Form 19b–4(e) for a prescribed period of time.

This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e). The Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges. As of January 2016, there are eighteen entities registered as national securities exchanges with the Commission. The Commission receives an average total of 2,088 responses per year, which corresponds to an estimated annual response burden of 2,088 hours. At an average hourly cost of $64, the aggregate related internal cost of compliance with Rule 19b–4(e) is $133,632 (2,088 burden hours multiplied by $64/hour).

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission'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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

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: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04348 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 3, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Opinion;

Adjudicatory matters;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 25, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–04528 Filed 2–26–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32005; 812–14540]

LoCorr Fund Management, LLC and LoCorr Investment Trust; Notice of Application

February 24, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.[1]

APPLICANTS: LoCorr Investment Trust (the ''Trust''), an Ohio business trust registered under the Act as an open-end management investment company with multiple series, and LoCorr Fund Management, LLC, a Minnesota limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''LoCorr'' or the ''Adviser,'' and, collectively with the Trust, the ''Applicants'').

FILING DATES: The application was filed August 28, 2015, and amended on December 29, 2015 and January 16, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Jon C. Essen, LoCorr Fund Management, LLC, 261 School Avenue, 4th Floor, Excelsior, MN 55331; and JoAnn Strasser, Esq., Thompson Hine LLP, 41 South High Street 17th Floor, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at (202) 551–6882, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

[1] The requested order would supersede an exemptive order issued to the Applicants on Sept. 11, 2012 (the ''Prior Order''), with the result that no person will continue to rely on the Prior Order if the requested order is granted. *See* LoCorr Fund Management, LLC and LoCorr Investment Trust, Investment Company Act Release Nos. 30168 (Aug. 14, 2012) (notice) and 30199 (Sept. 11, 2012) (order).

Summary of the Application

1. The Adviser will serve as the investment adviser to the Funds pursuant to an investment advisory agreement with the Trust (the ''Advisory Agreement'').[2] The Adviser will provide the Funds with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Fund's board of trustees (''Board''). The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a ''Sub-Adviser'' and collectively, the ''Sub-Advisers'') the responsibility to provide the day-to-day portfolio investment management of each Fund, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Funds will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Adviser; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, ''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Fund shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the Application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04352 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

[2] Applicants request relief with respect to any existing and any future series of the Trust and any other registered open-end management company or series thereof that: (a) Is advised by LoCorr or its successor or by a person controlling, controlled by, or under common control with LoCorr or its successor (each, also an ''Adviser''); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a ''Fund'' and collectively, the ''Funds''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Funds (''Affiliated Sub-Adviser'').

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77221; File No. SR–Phlx–2016–26]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section II of the Exchange's Pricing Schedule

February 24, 2016.

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 February 10, 2016, NASDAQ PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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

The Exchange proposes to amend the Exchange's Pricing Schedule (''Pricing Schedule'') at section II, entitled ''Multiply Listed Options Fees,'' [3] to: (1) Exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Exchange's Pricing Schedule at section II to: (1) Exclude floor volume from the Monthly Market Maker Cap; (2) increase the assessment for select Firm electronic simple orders; and (3) state

[3] Multiply Listed Options Fees include options overlying equities, exchange traded funds (''ETFs''), exchange traded notes (''ETNs'') and indexes which are Multiply Listed.

[4] Monthly Market Maker Cap and MARS are discussed below.

that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

Change 1—Multiply Listed Options Fees—Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap. Offering the Monthly Market Maker Cap as proposed, and as discussed below, will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and 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.

Currently, the Monthly Market Maker Cap in section II in the Pricing Schedule states:

• Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) Electronic and floor Option Transaction Charges; and (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)). The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this section II) will be excluded from the Monthly Market Maker Cap. Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows:

Fee per contract

$0.05 per contract Fee for Adding Liquidity in Penny Pilot Options.

$0.18 per contract Fee for Removing Liquidity in Penny Pilot Options.

$0.18 per contract in Non-Penny Pilot Options.

$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction (''COLA''). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

Today, the Exchange applies certain caps [5] on Multiply Listed Option Fees assessed to Customer,[6] Professional,[7] Specialist,[8] Market Maker,[9] Broker-Dealer,[10] and Firm.[11] Today, Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $500,000 for: (i) electronic and floor Option Transaction Charges; and (ii) qualified contingent cross (''QCC'') Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders,[12] as defined in 1064(e)).[13] The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership [14] between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll,[15] and box spread strategy executions (as defined in Section II in the Pricing Schedule) are excluded from the Monthly Market Maker Cap (together the ''excluded strategies'').[16] The Exchange proposes to exclude floor volume from the Monthly Market Maker Cap.

The Exchange's proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable and proper because, despite the change, the Exchange will, through the Monthly Market Maker Cap, continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of $500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions

[5] These caps reflect different levels for different strategies. For example, there is a $1,500 cap for certain dividend, merger and short stock interest strategies; and there is a $700 cap for certain reversal and conversion, jelly roll and box spread floor option transaction strategies. The Exchange further separately caps each member organization for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions in Multiply Listed Options, combined in a month when trading in their own proprietary accounts (''Monthly Strategy Cap'') at $65,000 per member organization, per month.

[6] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14).

[7] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[8] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[9] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also Market Makers.

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[11] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[12] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the Qualified Contingent Trade (''QCT'') Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. *See* Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

[13] Certain strategy executions, discussed below, will be excluded from the Monthly Market Maker Cap.

[14] The term ''Common Ownership'' means members or member organizations under 75% common ownership or control.

[15] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. A reversal or conversion strategies is a transaction that employ calls and puts of the same strike price and the underlying stock.

[16] Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed separately. A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''PIXL Order'') against principal interest or against any other order (except as provided in Rule 1080(n)(i)(F)) it represents as agent (''Initiating Order'') provided it submits the PIXL order for electronic execution into the PIXL Auction (''Auction'') pursuant to Rule 1080. *See* Exchange Rule 1080(n). Non-Initiating Order interest could be a PIXL Auction Responder or a resting order or quote that was on the Phlx book prior to the auction. PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. *See* Rule 1080(n).

(sans excluded strategies) for the remainder of that month as a result of the fee cap.

The Exchange is making the proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap because the Exchange floor incurs additional costs (*e.g.,* personnel, equipment, surveillance) related to a business model that includes floor-based trading. This proposal helps the Exchange to recover such costs while continuing to offer the Monthly Market Cap, which incentivizes market participants to bring liquidity and order flow to the Exchange.

Change 2—Multiply Listed Options Fees—Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment for select Firm electronic simple (non-complex) [17] orders because the Exchange is trying to keep up with rising expenses and this modest fee increase will help the Exchange to defray them.

The select symbols AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF are high volume Penny Pilot [18] Options listed on the Exchange. The Exchange is proposing a modest increase in the assessment from $0.34 to $0.37, so that as proposed Note 12 will read as follows:

''[12]Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF will be assessed $0.37.''

The proposed increase for the Firm electronic simple orders in the noted options is not an outlier; rather, it is similar to and competitive with what is offered by other options markets.[19] The Exchange believes that the Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange.

Change 3—Other Transaction Fees—MARS Payment

The Exchange proposes to state that Phlx members that have executed the required MARS Eligible Contracts may receive the Market Access and Routing Subsidy (''MARS'') Payment on all their MARS Eligible Contracts. The Exchange believes that, as discussed below, expanding who is eligible to receive MARS Payment will incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities.

Currently, section IV E. in the Pricing Schedule states:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract. This MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

Currently, a MARS Payment will be paid only on executed Firm orders routed to Phlx through a participating Phlx member's System.

Today, to qualify for MARS, a Phlx member's routing system (''System'') would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including Phlx; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with Phlx's application program interface (''API'') to access current Phlx match engine functionality. Further, the member's System would also need to cause Phlx to be the one of the top three default destination exchanges for individually executed marketable orders if Phlx is at the NBBO, regardless of size or time, but allow any user to manually override Phlx as a default destination on an order-by-order basis.[20] Today, MARS Payment is only on Firm orders routed to Phlx through a participating Phlx member's System. The Exchange proposes to expand the participant types besides Firm (BD, JBO, Professional) that are eligible for MARS Payment.[21]

The Exchange proposes to indicate what qualifying volume will be eligible for MARS Payment (no longer only Firm) and to state that Phlx members that have executed the prerequisite MARS Eligible Contracts may receive the MARS Payment of $0.10 per contract. For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or ''JBO'' or Professional equity option orders that are electronically delivered and executed.[22] A MARS Payment will be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.

As proposed Section IV E. in the Pricing Schedule will read as follows:

MARS Payment

Phlx members that have System Eligibility and have executed the Eligible Contracts in a month may receive the MARS Payment of $0.10 per contract for all Eligible Contracts routed to Phlx through a participating Phlx member's System. No payment will be made with respect to orders that are routed to Phlx, but not executed.

The Exchange believes that the fees and rebates in its Pricing Schedule are structured to attract liquidity. Despite the proposed changes, Phlx members and the Phlx market will continue to be encouraged to transact greater liquidity on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with section 6(b) of the Act [23] in general, and furthers the objectives of section 6(b)(4) and (b)(5) of the Act [24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference

[17] A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A complex order can also be a stock-option order. *See* Exchange Rule 1080, Commentary .07(a)(i).

[18] The Penny Pilot was established in January 2007 and was last extended in 2015. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); and 75286 (June 24, 2015), 80 FR 37333 (June 30, 2015) (SR–Phlx–2015–54) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). Penny Pilot Options listed on the Exchange can be found at *http://www.nasdaqtrader.com/Micro.aspx?id=phlx.*

[19] *See, e.g.,* the pricing schedule of NYSE AMEX OPTIONS (AMEX) at *https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf,* and of MIAX OPTIONS (MIAX) at *http://www.miaxoptions.com/content/fees. See also, e.g.,* the pricing schedule of NASDAQ PHLX LLC (''Phlx'') and NASDAQ Options Market (''NOM'').

[20] Notwithstanding the above, complex orders would not be required to enable the electronic routing of orders to all of the U.S. options exchanges or provide current consolidated market data from the U.S. options exchanges. Any Phlx member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies Phlx that it appears to be robust and reliable. The member remains solely responsible for implementing and operating its system. Section IV E. in the Pricing Schedule.

[21] To be eligible, as discussed, Eligible Contracts must be routed through a participating Phlx member's System.

[22] The Exchange is removing the word ''may'' to tighten up the language regarding what Eligible Contracts qualify for MARS Payment. Eligible Contracts do not include floor-based orders, qualified contingent cross or ''QCC'' orders, price improvement or ''PIXL'' orders, Mini Option orders or Singly Listed Orders.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4), (5).

for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [25] Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [26] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach. [27] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [28]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [29] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1—Multiply Listed Options Fees—Monthly Market Maker Cap

In Change 1 the Exchange proposes to exclude floor volume from the calculation of the Monthly Market Maker Cap that applies to Specialists and Market Makers when calculating the Monthly Market Maker Cap.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

The Exchange's proposal to exclude floor volume from the calculation of the Monthly Market Maker Cap is reasonable because, despite the change, the Exchange will continue to offer members an opportunity to pay lower fees. The trading activity of separate Specialist and Market Maker member organizations will continue to be aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. Specialists and Market Makers [30] will continue to be subject to the Monthly Market Maker Cap, and once the Monthly Market Maker Cap of $500,000 is reached, the members to whom the cap applies will not have to pay for additional strategy executions for the remainder of that month as a result of the fee cap.

Excluding floor Options Transaction Charges from the Monthly Market Maker Cap is reasonable, equitable and not unfairly discriminatory because electronic Options Transaction Charges would continue to be capped as part of the Monthly Market Maker Cap, which applies only to Specialists and Market Makers. The Exchange would include floor option transaction charges related to reversal and conversion, jelly roll and box spread strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on electronic options transaction charges, reversal and conversion, jelly roll and box spread transactions, which are included in the Monthly Strategy Cap, are excluded from the Monthly Market Maker Cap. The Exchange believes also that its proposal to exclude floor transactions from the Monthly Market Maker Cap is reasonable because the Exchange floor incurs additional costs (*e.g.,* personnel, equipment, surveillance) related to a business model that includes floor-based trading.

For the reasons described above, the Exchange believes that continuing to offer the Monthly Market Maker Cap as proposed will continue to incentivize market participants to bring liquidity and order flow to the Exchange for the benefit of all market participants. Liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and 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. Specialists and Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. Moreover, the proposed change to the fee structure and rebate structure will be applied uniformly to all.

Change 2—Multiply Listed Options Fees—Firm Electronic Simple Orders

In Change 2 the Exchange proposes to increase the assessment from $0.34 to $0.37 per contract for select Firm electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF. The assessment for the noted simple orders is in the Multiply Listed Options Fees schedule for options overlying equities, ETFs, ETNs, and certain indexes.

The Exchange believes that the proposed change for the Firm electronic simple orders in the noted options, which are high volume Penny Pilot Options listed on the Exchange,[31] is reasonable. This is because the proposed change is very modest and is not an outlier; rather, it is similar to and competitive with what is offered by other options markets.[32] The the [sic] Multiply Listed Options Fees schedule continues as constructed to be competitive and encourage market participants to bring liquidity to the Exchange. The Exchange believes that despite the proposed increase, which will help the Exchange to recover costs, Firms will continue to be incentivized

[25] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[26] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[27] *See id.* at 534–535.

[28] *See id.* at 537.

[29] *Id.* at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

[30] Specialists and Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace. They also have obligations to the market and regulatory requirements, which normally do not apply to other market participants. These obligations include: to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[31] The high volume in the noted options is present across other options exchanges.

[32] *See, e.g.,* the pricing schedule of NYSE AMEX OPTIONS (AMEX) at *https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf,* and of MIAX OPTIONS (MIAX) at *http://www.miaxoptions.com/content/fees. See also, e.g.,* the pricing schedule of NASDAQ PHLX LLC (''Phlx'') and NASDAQ Options Market (''NOM'').

to transact electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF on the Exchange.

The Exchange believes that the modest change from $0.34 to $0.37 in Note 12 is equitable and not unfairly discriminatory because the assessment is modest and will be applied uniformly to all Firms that send in electronic simple orders in AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX, and XLF.[33]

Change 3—Other Transaction Fees—MARS Payment

In Change 3 the Exchange proposes to state that Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory.

Where currently a MARS Payment will be paid only on executed Firm orders, the proposed change would allow all qualifying MARS volume to receive a MARS Payment. With the proposed change, all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment of $0.10 per contract. The Exchange believes that this is reasonable because it incentivizes more Phlx members to rout Eligible Contracts for execution on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the increased ability to receive MARS Payment will be applied uniformly to all. Thus, a MARS Payment will be made to Phlx members that have System Eligibility and have routed at least 30,000 Eligible Contracts daily in a month, which were executed on Phlx.[34]

The Exchange desires to continue to incentivize members and member organizations, through the Exchange's rebate and fee structure, to select Phlx as a venue for bringing liquidity and trading by offering competitive pricing. Such competitive, differentiated pricing exists today on other options exchanges. The Exchange's goal is creating and increasing incentives to attract orders to the Exchange that will, in turn, benefit all market participants through increased liquidity at the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its proposal to exclude floor volume from the Monthly Market Maker Cap, increase the assessment for select Firm electronic simple orders, and state that all Phlx members that have executed MARS Eligible Contracts may receive the MARS Payment does not impose a burden on competition. The Exchange's proposal will continue to encourage eligible market participants to transact orders on the Exchange in order to obtain the Monthly Market Maker Cap and MARS Payments.

The Exchange operates in a highly competitive market, comprised of at least twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–26 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–Phlx–2016–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–

[33] The Exchange notes that, as discussed, Note 12 continues to apply only to certain Firm orders. Note 12 does not apply to other fee liable members (*e.g.,* Broker Dealer, Specialist and Market Maker, Professional, Customer), and as such the proposed change does not effectively change the fee relationship between Firms and such members.

[34] For the purpose of qualifying for the MARS Payment, Eligible Contracts include the following: Firm, Broker-Dealer, Joint Back Office or ''JBO'' or Professional equity option orders that are electronically delivered and executed. Eligible Contracts must be routed through a participating Phlx member's System and do not include floor-based orders, qualified contingent cross or ''QCC'' orders, price improvement or ''PIXL'' orders, Mini Option orders or Singly Listed Orders.

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

2016–26, and should be submitted on or before March 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04357 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–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 S–1, SEC File No. 270–058, OMB Control No. 3235–0065.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') this request for an extension of the previously approved collection of information discussed below.

Form S–1 (17 CFR 239.11) is the form used by issuers to register the offer and sale of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) when no other form is authorized or prescribed. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form S–1 takes approximately 667 hours per response and is filed by approximately 901 respondents. We estimate that 25% of the 667 hours per response (166.75 hours) is prepared by the registrant for a total annual reporting burden of 150,242 hours (166.75 hours per response × 901 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04441 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; 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: Rule 19d–3, SEC File No. 270–245, OMB Control No. 3235–0204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–3 prescribes the form and content of applications to the Commission by persons seeking Commission review of final disciplinary actions against them taken by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Final disciplinary sanctions; (2) denial or conditioning of membership, participation or association; and (3) prohibitions or limitations of access to services offered by a SRO or member thereof.

It is estimated that approximately six respondents will utilize this application procedure annually, with a total burden of approximately 108 hours, for all respondents to complete all submissions. This figure is based upon past submissions. It is estimated that each respondent will submit approximately one response. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 will be approximately eighteen hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, it is estimated the internal labor cost of compliance for all respondents is approximately $10,908 (6 submissions × 18 hours per response × $101 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela C. 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: February 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04349 Filed 2–29–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14639 and #14640]

New Jersey Disaster #NJ–00045

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of NEW JERSEY dated 02/22/2016.

Incident: Severe Winter Snow Storm.

[36] 17 CFR 200.30–3(a)(12).

Incident Period: 01/22/2016 through 01/24/2016.

DATES: *Effective Date:* 02/22/2016.

Physical Loan Application Deadline Date: 04/22/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/22/2016.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Atlantic.

Contiguous Counties:

New Jersey: Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14639 B and for economic injury is 14640 0.

The States which received an EIDL Declaration # are New Jersey.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–04424 Filed 2–29–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0004]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0004].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 2, 2016. Individuals can obtain copies of the collection instrument by writing to the above email address.

Real Property Current Market Value Estimate—0960–0471. SSA considers an individual's resources when evaluating eligibility for Supplemental Security Income (SSI) payments. The value of an individual's resources, including non-home real property, is one of the eligibility requirements for SSI payments. SSA obtains current market value estimates of the claimant's real property through Form SSA–L2794. We allow respondents to use readily available records to complete the form, or we can accept their best estimates. We use this form as part of initial applications and in post-entitlement situations. The respondents are small business operators in real estate; state and local government employees tasked with assessing real property values; and other individuals knowledgeable about local real estate values.

Type of Request: Revision of an OMB approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L2794	250	1	20	83

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 31, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA requires all applicants and recipients of Social Security Old Age, Survivors, and Disability Insurance (OASDI) benefits, or SSI payments to receive these benefits and payments via direct deposit at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds with their chosen financial institution. We also use this information when an enrolled

individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an Internet application, in-office or telephone interviews, and our national 800 number. In addition to using the direct deposit information to enable DD/EFT of funds to the recipient's chosen financial institution, we also use the information through our Direct Deposit Fraud Indicator to ensure the correct recipient receives the funds. Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program or change their direct deposit banking information.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Internet DD	507,214	1	10	84,536
Non-Electronic Services (FO, 800#- ePath, MSSICS, SPS, MACADE, POS, RPS)	3,317,351	1	12	663,470
Direct Deposit Fraud Indicator	54,016	1	2	1,801
Totals	3,878,581			749,807

2. Centenarian and Medicare Non-Utilization Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135—0960–0780. SSA conducts interviews with centenary Title II beneficiaries and Title XVI recipients, and Medicare Non-Utilization Project (MNUP) beneficiaries age 90 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud through identity misrepresentation; and (3) evaluate the well-being of the recipients. SSA field office personnel obtain the information through one-time, in-person interviews with the centenarians and MNUP beneficiaries. If the centenarians and MNUP beneficiaries have representatives or caregivers, SSA personnel invite them to the interviews. During these interviews, SSA employees make overall observations of the centenarians, MNUP beneficiaries, and their representative payees (if applicable). The interviewer uses the appropriate Development Worksheet as a guide for the interview, in addition to documenting findings during the interview. Non-completion of the Worksheets, or refusal of the interviews, will result in the suspension of the centenarians' or MNUP beneficiaries' payments. SSA conducts the interviews either over the telephone or through a face-to-face discussion with the respondents. Respondents are SSI recipients or Social Security beneficiaries 100 years old or older; MNUP beneficiaries; their representative payees; or their caregivers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Centenarian Project—Title XVI Only*	240	1	15	60
MNUP—All Title II Responses	4,400	1	15	1,100
Totals	4,640			1,160

* Some cases are T2 rollovers from prior Centenarian workloads

Dated: February 23, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–04229 Filed 2–29–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9457]

Notice of Request for Expressions of Interest by Environmental Experts in Assisting the CAFTA–DR Secretariat for Environmental Matters With the Preparation of Factual Records

AGENCY: Department of State.

ACTION: Request for expressions of interest by environmental experts to assist the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) Secretariat for Environmental Matters (Secretariat) with the preparation of factual records.

SUMMARY: The U.S. Department of State (State Department) and the Office of the U.S. Trade Representative (USTR) are compiling recommendations for additional candidates to be included on the roster of environmental experts from which the CAFTA–DR Secretariat selects individuals to assist in the preparation of factual records. The State Department and USTR invite environmental experts, including representatives from non-governmental organizations, educational institutions, private sector enterprises, and other interested persons, to submit their expression of interest in being included on the roster of experts. We encourage submitters to review the following prior to expressing interest: (1) Chapter 17: Environment of the CAFTA–DR, in particular Articles 17.7 and 17.8; (2) paragraph 2(d) of the Understanding Regarding the Establishment of a Secretariat for Environmental Matters Under CAFTA–DR; (3) paragraphs 3 and 4 of Article 5 of the Agreement Establishing a Secretariat for Environmental Matters Under CAFTA–DR; and (4) Decision No. 10 of the CAFTA–DR Environmental Affairs Council (Council). Submitters also are encouraged to review the definition of ''environmental law'' in Article 17.13 of Chapter 17 to get a sense of the range of environmental matters that could be at issue in a factual record. These documents are available at: *http://www.state.gov/e/oes/eqt/trade/caftadr/.*

DATES: To be assured of timely consideration, expressions of interest are requested no later than March 31, 2016.

ADDRESSES: Expressions of interest should be emailed or faxed to Laura Buffo, Office of Environment and Natural Resources, Office of the United States Trade Representative (*Laura_Buffo@ustr.eop.gov,* Fax: 202–395–9510), and Neal Morris, Office of Environmental Quality and Transboundary Issues, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State (*MorrisND@state.gov,* Fax: 202–647–5947), with the subject line ''CAFTA–DR Roster of Environmental Experts to Assist in Development of Factual Records.'' If you have access to the Internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number: DOS–2016–0006.

FOR FURTHER INFORMATION CONTACT: Neal Morris—*MorrisND@state.gov,* (202) 647–9312; or Laura Buffo—*Laura_Buffo@ustr.eop.gov,* (202) 395–9424.

SUPPLEMENTARY INFORMATION: Pursuant to Article 17.7 and 17.8 of CAFTA–DR, any person of a Party may file a submission with the CAFTA–DR Secretariat asserting that a Party is failing to effectively enforce its environmental laws. Where the Secretariat determines that a submission meets the criteria set out in paragraph 2 and 4 of Article 17.7, and where the Secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the Secretariat shall so inform the Council and provide its reasons. The Secretariat shall prepare a factual record if the Council, by vote of any Party, instructs it to do so. We recommend that submitters review completed factual records by visiting the CAFTA–DR Secretariat Web site at *www.saa-sem.org.*

Pursuant to paragraph 2(d) of the Understanding Regarding the Establishment of a Secretariat for Environmental Matters Under CAFTA–DR (the Understanding), the Council shall establish a roster of environmental experts, comprising persons with a demonstrated record of good judgment, objectivity, and environmental expertise, including regional expertise, from which the Secretariat shall select, as appropriate, individuals to assist the Secretariat with the preparation of factual records pursuant to Article 17.8 of the CAFTA–DR.

In accordance with paragraph 2(d) of the Understanding and paragraphs 3 and 4 of Article 5 of the Agreement Establishing a Secretariat for Environmental Matters Under CAFTA–DR, on July 3, 2012, the Council set forth procedures for the Secretariat to follow regarding the engagement of such experts. See Decision No. 10, ''Engagement of Environmental Experts to Assist the Secretariat for Environmental Matters with the Preparation of Factual Records.'' Pursuant to Decision No. 10, when the General Coordinator deems it necessary, such as when the existing roster does not contain any individuals with the relevant expertise that is necessary to assist the SEM in the preparation of a particular factual record, the General Coordinator shall seek input from the Council Members on additional candidates for the roster. The Council shall decide, by consensus, to accept the revisions to the roster as proposed or with modifications.

Decision No. 10 provides that individuals selected for inclusion on the roster shall:

- Have demonstrated a record of good judgment, objectivity and environmental expertise;
- Carry out all duties fairly, thoroughly and diligently;
- Demonstrate national or regional expertise where possible;
- Avoid impropriety or the appearance of impropriety and shall observe high standards of conduct so that the integrity or impartiality of any work performed by the expert at the request of the SEM shall not be called into question;
- Not seek or receive instructions from any government or any other authority external to the SEM or Council. Accordingly, experts shall not have *ex parte* contacts with any of the Parties without the prior explicit consent of the Secretariat or Council;
- Safeguard from public disclosure any information received in their capacity as an environmental expert, where the information is designated by its source as confidential or proprietary;
- Ensure that his or her work complies with all applicable laws and regulations; and
- Promptly disclose any interest, relationship or matter that is likely to affect the expert's independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in his work.

The State Department and USTR are requesting expressions of interest from experts who wish to be included on the roster. To do so, please submit the following information:

1. Full Name;
2. Contact information (should include a business address, telephone number, and email address);
3. Citizenship(s);
4. A resume' or curriculum vitae;
5. A letter of reference;
6. Three individuals, in addition to the author of the letter of reference, who are willing to serve as a reference and provide information regarding the expert's professional experience (should include name, contact information, and relationship to expert);
7. A summary of any current and past employment by, consulting experience, or other work for any of the Governments that are a Party to the CAFTA–DR;
8. Proof of Spanish and English language proficiency, written and spoken.

For additional information, please visit: *http://www.state.gov/e/oes/eqt/trade/caftadr/.*

Disclaimer: This Public Notice is a request for expressions of interest, and is not a request for applications. No granting of money is directly associated with this request. The State Department and USTR will select which environmental experts will be recommended by the United States for inclusion on the roster.

Dated: February 24, 2016.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–04519 Filed 2–29–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9456]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a Working Paper prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The public meeting will take place on Tuesday, May 3, 2016 from 10 a.m. until 12 p.m. EDT. This is not a meeting of the full Advisory Committee.

The UNCITRAL Secretariat has revised draft provisions on electronic transferable records, which are presented in the form of a model law, for discussion during the next meeting of UNCITRAL's Working Group IV, which will meet May 9–13, 2016. The

Working Paper, which will be numbered WP.137 and will include WP.137/Add.1, will be available at *http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.*

The purpose of the public meeting is to obtain the views of concerned stakeholders on the topics addressed in the Working Paper in advance of the meeting of Working Group IV. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at *coffeems@state.gov.*

Time and Place: The meeting will take place from 10 a.m. until 12 p.m. EDT in Room 356, South Building, State Department Annex 4, Washington, DC 20037. Participants should plan to arrive at the Navy Hill gate on the west side of 23rd Street NW., at the intersection of 23rd Street NW., and D Street NW., by 9:30 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than April 26, 2016. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and E.O. 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Dated: February 19, 2016.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2016–04522 Filed 2–29–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Small Unmanned Aircraft Registration System (sUAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. Aircraft registration is necessary to ensure personal accountability among all users of the national airspace system. Aircraft registration also allows the FAA and law enforcement agencies to address non-compliance by providing the means by which to identify an aircraft's owner and operator.

DATES: Written comments should be submitted by May 2, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0765.

Title: Small Unmanned Aircraft Registration System (sUAS).

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Secretary of the Department of Transportation (DOT) and the Administrator of the Federal Aviation Administration (FAA) recently affirmed that all unmanned aircraft, including model aircraft, are aircraft. As such, in accordance with 49 U.S.C. 44101(a) and as further prescribed in 14 CFR part 47, registration is required prior to operation. *See* 80 FR 63912, 63913 (October 22, 2015). Aircraft registration is necessary to ensure personal accountability among all users of the national airspace system. *See id.* Aircraft registration also allows the FAA and law enforcement agencies to address non-compliance by providing the means by which to identify an aircraft's owner and operator.

Respondents: Approximately 1.9 million registrants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 4.25 minutes.

Estimated Total Annual Burden: 141,158 hours.

Issued in Washington, DC, on February 24, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–04516 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: RTCA Special Committee (233) Addressing Human Factors/Pilot Interface Issues for Avionics

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

ACTION: Notice of Fifth RTCA Special Committee 233 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Fifth RTCA Special Committee 233 meeting.

DATES: The meeting will be held March 8–10, 2016 from 8:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at RTCA Inc. Conference Room, 1150 18th Street NW., Suite 910, Washington, DC, Tel: (202) 330–0680.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202)

833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 233. The agenda will include the following:

Tuesday, March 8, 2016

1. Introduction, Upcoming PMC Dates and Deliverable
2. Review Summary from Last Meeting Working Group; current status of document
3. Review of TOR
4. March meeting objectives for subcommittees
5. Detailed Outline Discussion and feedback

Wednesday, March 9, 2016

1. Working Groups Break Out Sessions
2. End of the Day Working Group Status Report Outs

Thursday, March 10, 2016

1. Morning
   a. Working Groups Break Out Session
   b. Leadership Team Wrap-up
2. Afternoon
   a. Discussion on Outline Content
   b. Subcommittee Assignment Status
   c. Subcommittee leader reports
   d. Follow-on actions identified for each subcommittee
   e. Meeting Recap, Action Items, Key Dates

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 24, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–04510 Filed 2–26–16; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA—2015–0342]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 91 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 31, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0342 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 91 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Erich R. Adam

Mr. Adam, 66, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Adam understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adam meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Wisconsin.

Phillip W. Ballew

Mr. Ballew, 32, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ballew understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ballew meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Dennis B. Basmajian

Mr. Basmajian, 65, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Basmajian understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Basmajian meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

Glen A. Bayne

Mr. Bayne, 65, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bayne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bayne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Gary E. Bennett

Mr. Bennett, 61, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bennett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Harry Berrios

Mr. Berrios, 55, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Berrios understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Berrios meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Terry D. Bettcher

Mr. Bettcher, 54, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bettcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bettcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

Jeremy S. Beyerl

Mr. Beyerl, 35, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beyerl understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beyerl meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Norvan D. Bilyeu

Mr. Bilyeu, 57, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bilyeu understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bilyeu meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Robert P. Blum

Mr. Blum, 69, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or

more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blum understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Mario Boccio

Mr. Boccio, 49, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boccio understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boccio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Christopher J. Branham

Mr. Branham, 39, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Branham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Branham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Carolina.

Willard A. Brown

Mr. Brown, 73, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Chanley W. Carter

Mr. Carter, 64, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Trevor K. Chaplin

Mr. Chaplin, 24, has had ITDM since 2001. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chaplin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chaplin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Candace L. Coccimiglio

Ms. Coccimiglio, 52, has had ITDM since 2010. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Coccimiglio understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Coccimiglio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Pennsylvania.

Matthew C. Costa

Mr. Costa, 25, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Costa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Costa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Wilfredo Costa

Mr. Costa, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Costa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Costa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Joseph F. Coyle

Mr. Coyle, 51, has had ITDM since 1985. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coyle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coyle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Kentucky.

Robert P. Crisp

Mr. Crisp, 34, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crisp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crisp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Philip W. Cumbie

Mr. Cumbie, 41, has had ITDM since 1987. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cumbie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cumbie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

John H. Cuppett

Mr. Cuppett, 55, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cuppett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cuppett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Georgia.

Quentin W.S. Dasilva

Mr. Dasilva, 23, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dasilva understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dasilva meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Randal L. DeBord

Mr. DeBord, 56, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. DeBord understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DeBord meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Eudes N. De-Leon

Mr. De-Leon, 36, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. De-Leon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. De-Leon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Eric H. DeVaughn

Mr. DeVaughn, 49, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. DeVaughn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. DeVaughn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Aleksandr Faynkikh

Mr. Faynkikh, 57, has had ITDM since 1998. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Faynkikh understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Faynkikh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Berry C. Feuerbacher

Mr. Feuerbacher, 54, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Feuerbacher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Feuerbacher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

Isaac W. Fitzgerald

Mr. Fitzgerald, 24, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fitzgerald understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fitzgerald meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Alex C. Ford

Mr. Ford, 31, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Robert C. Freeman

Mr. Freeman, 55, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Timothy D. Frye

Mr. Frye, 55, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Frye understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frye meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Samuel J. Gonzales

Mr. Gonzales, 56, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gonzales understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzales meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Carlos Guzman-Pineda

Mr. Guzman-Pineda, 50, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Guzman-Pineda understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guzman-Pineda meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Steven R. Hatch

Mr. Hatch, 53, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hatch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hatch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

William D. Herman

Mr. Herman, 21, has had ITDM since 1994. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Herman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Herman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Kyle W. Higgs

Mr. Higgs, 25, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Higgs understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Higgs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Floyd E. Holt, Jr.

Mr. Holt, 46, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Virginia.

Michael J. Jaques

Mr. Jaques, 32, has had ITDM since 1989. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jaques understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jaques meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Randall L. Jastram

Mr. Jastram, 64, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jastram understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jastram meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Dakota.

Thomas M. Johnson

Mr. Johnson, 55, has had ITDM since 1973. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from New Mexico.

Steven R. Jordan

Mr. Jordan, 41, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jordan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jordan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Kevin A. Kane

Mr. Kane, 49, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kane understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kane meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Ryan B. Kincade

Mr. Kincade, 31, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kincade understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kincade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable

proliferative diabetic retinopathy. He holds an operator's license from California.

Christopher S. Kuiper

Mr. Kuiper, 51, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kuiper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kuiper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Herman M. Laggart

Mr. Laggart, 64, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Laggart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Laggart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Missouri.

William M. LaPrade

Mr. LaPrade, 51, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaPrade understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaPrade meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Martin L. Layden

Mr. Layden, 62, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Layden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Layden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

John Malloy

Mr. Malloy, 64, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Malloy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Malloy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Bobby L. McCallister

Mr. McCallister, 40, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McCallister understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCallister meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

James W. McMenamin

Mr. McMenamin, 69, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McMenamin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McMenamin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Daniel J. Milles, Jr.

Mr. Milles, 58, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Milles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Milles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Miguel A. Molina

Mr. Molina, 50, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist

certifies that Mr. Molina understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Molina meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Darin R. Mullins

Mr. Mullins, 46, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mullins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mullins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Douglas B. Murrell

Mr. Murrell, 57, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Murrell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murrell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Joshua A. Myers

Mr. Myers, 33, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Myers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Myers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Howard L. Nelson

Mr. Nelson, 76, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nelson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

William C. Nelson

Mr. Nelson, 55, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nelson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nelson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Chris R. Niles

Mr. Niles, 39, has had ITDM since 1998. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Niles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Niles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Keith E. Osterbaan

Mr. Osterbaan, 53, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Osterbaan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Osterbaan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

George R. Otis

Mr. Otis, 53, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Otis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Otis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Massachusetts.

Bolaji B. Oyegbola

Ms. Oyegbola, 41, has had ITDM since 2001. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions

resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Oyegbola understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Oyegbola meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Washington, DC.

Teddy D. Peller

Mr. Peller, 58, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

Jeffrey P. Peloquin

Mr. Peloquin, 58, has had ITDM since 1988. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peloquin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peloquin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Scott A. Pietruszynski

Mr. Pietruszynski, 56, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pietruszynski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pietruszynski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Louis Polillo

Mr. Polillo, 81, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Polillo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Polillo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

John P. Reed, III

Mr. Reed, 65, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reed understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reed meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Valentin Reyna, Jr.

Mr. Reyna, 56, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reyna understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reyna meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

Randy D. Rinnels

Mr. Rinnels, 54, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rinnels understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rinnels meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

William A. Robinson

Mr. Robinson, 58, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Robinson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His

ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Thomas W. Scott, Jr.

Mr. Scott, 64, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Gregory J. Skloda

Mr. Skloda, 23, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Skloda understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skloda meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Charles L. Spencer

Mr. Spencer, 51, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Spencer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spencer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

Ricky L. Spencer

Mr. Spencer, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Spencer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spencer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

Roy E. Stroud

Mr. Stroud, 57, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stroud understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stroud meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

Kenneth W. Terhune, Jr.

Mr. Terhune, 36, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Terhune understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Terhune meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Delaware.

Robert B. Thomas

Mr. Thomas, 39, has had ITDM since 1992. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Raymond L. Torrez

Mr. Torrez, 47, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Torrez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torrez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Bore Trivuncic

Mr. Trivuncic, 59, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the

last 5 years. His endocrinologist certifies that Mr. Trivuncic understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trivuncic meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

William M. Turner

Mr. Turner, 34, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Turner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Turner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New Jersey.

Timothy C. Urrutia

Mr. Urrutia, 55, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Urrutia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Urrutia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Idaho.

Eloy O. Valdez

Mr. Valdez, 56, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Valdez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Valdez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

James H. Vogt

Mr. Vogt, 69, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vogt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vogt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Ronald L. Voigt

Mr. Voigt, 62, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Voigt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Voigt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Michael P. Volpe

Mr. Volpe, 59, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Volpe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Volpe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

James R. Watkins

Mr. Watkins, 44, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Anthony G. Wick

Mr. Wick, 56, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Michael C.J. Wilcox

Mr. Wilcox, 23, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilcox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilcox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Donald L. Winslow

Mr. Winslow, 49, has had ITDM since 2001. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Winslow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winslow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

James J. Wolf, Jr.

Mr. Wolf, 61, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wolf understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wolf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Kevin J. Yates

Mr. Yates, 53, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yates understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yates meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0342 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0342 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this **Federal Register** notice.

Issued on: February 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–04422 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0123; Notice 1]

Volkswagen Group of America, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America (Volkswagen), has determined that certain model year (MY) 2015–2016 Volkswagen e-Golf and Golf R passenger cars do not fully comply with paragraphs S4.3(c) and S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* Volkswagen filed a report dated November 25, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

DATES: The closing date for comments on the petition is March 31, 2016.

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 above 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. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Volkswagen 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 Volkswagen'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 4,965 MY 2015–2016 Volkswagen e-Golf passenger vehicles that were manufactured between May 21, 2014 and November 14, 2015 and approximately 4,618 MY 2015–2016 Volkswagen Golf R passenger vehicles that were manufactured between October 24, 2014 and November 14, 2015.

III. Noncompliance: Volkswagen explains that the noncompliance is that the tire placard, located on the driver's side B-pillar, was misprinted and does not contain the word ''none'' in the area reserved for the spare tire specifications (*i.e.*, size and pressure valves) as required by paragraphs S4.3(c) and S4.3(d) of FMVSS No. 110.

IV. Rule Text: Paragraph S4.3 of FMVSS No. 110 requires in pertinent part:

> S4.3 *Placard.* Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g), and may show, at the manufacturer's option, the information specified in S4.3(h) through (i), on a placard permanently affixed to the driver's side B-pillar . . .
>
> (c) Vehicle manufacturer's recommended cold tire inflation pressure for front, rear and spare tires, subject to the limitations of S4.3.4. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace manufacturer's recommended cold tire inflation pressure. If no spare tire is provided, the word ''none'' must replace the manufacturer's recommended cold tire inflation pressure.
>
> (d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size Designation;

V. Summary of Volkswagen's Petition: Volkswagen believes that the subject noncompliance is inconsequential to motor vehicle safety because the misprinted information on the tire placard is applicable to a component (spare tire) that was not provided with the subject vehicles. Volkswagen also stated that there is no effect on drivability, vehicle safety or tire wear.

Volkswagen also stated that they are not aware of any field or customer complaints related to the subject noncompliance.

Volkswagen additionally informed NHTSA that it has corrected the noncompliance so that all production of the subject vehicle models on and after November 14, 2015 will fully comply with FMVSS No. 110.

In summation, Volkswagen believes that the described noncompliances of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Volkswagen from providing recall notification of noncompliances 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 Volkswagen 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 Volkswagen 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 M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–04371 Filed 2–29–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

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 60 days for public comment in response to the notice.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.''

DATES: You should submit written comments by May 2, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, Attention: 1557–0184, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include obtaining, causing to be obtained, soliciting, or requiring the disclosure to an Agency of information by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of an existing collection of information, before submitting the collection to OMB for approval. In compliance with the PRA, the OCC is publishing notice of the proposed extension of the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW,[1] MSD–4, MSD–5, G–FIN, G–FINW, GFIN–4 and GFIN–5.[2]

Abstract: This information collection is required to satisfy the requirements of section 15B [3] and section 15C [4] of the Securities Exchange Act of 1934, which require, in part, any national bank or Federal savings association that acts as a government securities broker/dealer or a municipal securities dealer to file the appropriate form with the OCC to inform the agency of its broker/dealer activities. The OCC uses this information to determine which national banks and Federal savings associations are acting as government securities broker/dealers and municipal securities dealers and to monitor entry into and exit from these activities by institutions and registered persons. The OCC also uses the information in planning national bank and Federal savings association examinations.

Type of Review: Renewal of a currently approved collection. The collection has not changed. The OCC asks only that OMB approve its revised estimates and extend its approval of the forms.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 19 (8 government securities dealers; 1 municipal securities dealer; and 10 municipal and government securities dealers).

Estimated Number of Responses: 802.

Frequency of Response: On occasion.

Estimated Annual Burden: 735.5 burden hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a

[1] The Securities and Exchange Commission (SEC) maintains collections for the MSD and MSDW under OMB Control Nos. 3235–0083 and 3235–0087, however, there is a requirement that these be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[2] The Department of the Treasury maintains collections for the G–FIN–4 and G–FIN–5 under OMB Control No. 1535–0089, however there is a requirement that they be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[3] 15 U.S.C. 78o–4.

[4] 15 U.S.C. 78o–5.

matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 24, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative & Regulatory Activities Division.

[FR Doc. 2016–04354 Filed 2–29–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Providers of Travel and Carrier Services Submission

AGENCY: Office of Foreign Assets Control, 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning information collection requirements for OFAC's Provider of Travel and Carrier Services information collection, which are contained within the Cuban Assets Control Regulations set forth at 31 CFR part 515.

DATES: Written comments must be submitted on or before May 2, 2016 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the Web site for submitting comments.

Fax: Attn: Request for Comments (Persons Providing Travel and Carrier Services to Cuba) 202–622–1657.

Mail: Attn: Request for Comments (Persons Providing Travel and Carrier Services to Cuba), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Title: Persons Providing Travel and Carrier Services Submission.

OMB Number: 1505–0168.

Abstract: The information is required of persons subject to the jurisdiction of the United States who have been authorized by OFAC to provide travel and carrier services in connection with travel-related transactions involving Cuba pursuant to the general licenses in section 515.572 of the Cuban Assets Control Regulations, 31 CFR part 515 (CACR). Persons providing services authorized pursuant to 31 CFR 515.572 are required to retain for at least five years from the date of the transaction certain documentation from customers indicating the source of their authorization to travel to Cuba, which must be furnished to OFAC on demand.

Current Actions: As a result of policy changes, which were implemented in regulatory changes published by OFAC on January 16, 2015 (80 FR 2291), September 21, 2015 (80 FR 56915), and January 27, 2016 (81 FR 4583), OFAC modified the information collection requirements on persons providing travel and carrier services for the collection of that information as previously approved by the Office of Management and Budget (OMB) (No. 1505–0168). As to information collection requirements, OFAC previously required licensed Travel Service Providers to gather certain personal data about authorized travelers and provide it to licensed Carrier Service Providers, which then submitted this and certain other information to OFAC. OFAC now requires only that persons subject to U.S. jurisdiction providing services authorized pursuant to 31 CFR 515.572 retain for at least five years from the date of the transaction a certification from each customer indicating the section of the CACR that authorizes the person to travel to Cuba. In the case of a customer traveling under a specific license, a copy of the license must be maintained on file with the person subject to U.S. jurisdiction providing services authorized pursuant to 31 CFR 515.572. These records must be furnished to OFAC on demand.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals, households, businesses, banking institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 29,167.

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 for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–04356 Filed 2–29–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 24, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 31, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Control Number: 1505–0121.

Type of Review: Revision of a currently approved collection.

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

Abstract: Treasury disseminates to other agencies that are members of the Committee on Foreign Investment in the United States information collected under the regulations from parties involved in a foreign acquisition of a U.S. company in order to do a national security analysis of the acquisition.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 15,080.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–04344 Filed 2–29–16; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 455, et al.
Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 455, and 457

[CMS–6058–P]

RIN 0938–AS84

Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement sections of the Affordable Care Act that require Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose certain current and previous affiliations with other providers and suppliers. This proposed rule would also provide CMS with additional authority to deny or revoke a provider's or supplier's Medicare enrollment. In addition, this proposed rule would require that to order, certify, refer or prescribe any Part A or B service, item or drug, a physician or, when permitted, an eligible professional must be enrolled in Medicare in an approved status or have validly opted-out of the Medicare program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 25, 2016.

ADDRESSES: In commenting, please refer to file code CMS–6058–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this proposed rule to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6058–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6058–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Executive Summary and Background

A. Executive Summary

1. Purpose and Need for Regulatory Action

This proposed rule would implement a provision of the Affordable Care Act that requires Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose any current or previous direct or indirect affiliation with a provider or supplier that—(1) has uncollected debt; (2) has been or is subject to a payment suspension under a federal health care program; (3) has been excluded from Medicare, Medicaid or CHIP; or (4) has had its Medicare, Medicaid or CHIP billing privileges denied or revoked. This provision permits the Secretary to deny enrollment based on affiliations that the Secretary determines pose an undue risk of fraud, waste or abuse. Also, this proposed rule would revise various provider enrollment provisions in 42 CFR part 424, subpart P.

As discussed in greater detail in section II of this rule, our proposed provisions are necessary to address various program integrity issues and vulnerabilities that require regulatory action. We believe that our proposals would help make certain that entities and individuals who pose risks to the Medicare program are removed from and kept out of Medicare for extended periods of time; in particular, the rule would crack down on providers and suppliers who attempt to circumvent Medicare requirements through name and identity changes as well as through elaborate, inter-provider relationships. In short, the rule would enable us to take action against unqualified and potentially fraudulent entities and individuals, which in turn could deter other parties from engaging in improper behavior.

The following are the five principal legal authorities for our proposed provisions:

- Sections 1102 and 1871 of the Social Security Act (the Act), which provide general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.
- Section 1866(j) of the Act, which provides specific authority with respect to the enrollment process for providers and suppliers.

• Section 1866(j)(5) of the Act, as amended by section 6401(a)(3) of the Affordable Care Act, which states that a provider or supplier that submits a Medicare, Medicaid or CHIP application for enrollment or a revalidation application must disclose any current or previous affiliation (direct or indirect) with a provider or supplier that—(1) has uncollected debt; (2) has been or is subject to a payment suspension under a federal health care program; (3) has been excluded from participation in Medicare, Medicaid or CHIP; or (4) has had its billing privileges denied or revoked, and permits the Secretary to deny enrollment based on affiliations that the Secretary determines pose an undue risk of fraud, waste or abuse.

• Section 1902(kk)(3) of the Act,[1] as amended by section 6401(b) of the Affordable Care Act, which mandates that states require providers and suppliers to comply with the same disclosure requirements established by the Secretary under section 1866(j)(5) of the Act.[2]

• Section 2107(e)(1) of the Act, as amended by section 6401(c) of the Affordable Care Act, which makes the requirements of section 1902(kk) of the Act, including the disclosure requirements, applicable to CHIP.

2. Summary of the Major Provisions

The major provisions in this proposed rule would do the following:

• Implement a provision of the Affordable Care Act that requires certain Medicare, Medicaid, and CHIP providers and suppliers to disclose if a provider or supplier has any current or previous direct or indirect affiliation with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program; has been excluded from Medicare, Medicaid or CHIP; or has had its Medicare, Medicaid or CHIP billing privileges denied or revoked, and that permits the Secretary to deny enrollment based on an affiliation that the Secretary determines pose an undue risk of fraud, waste or abuse.

+ Describe the terms ''affiliation'', ''disclosable event,'' ''uncollected debt,'' and ''undue risk'' as they pertain to this Affordable Care Act provision.

• Provide CMS with the authority to do the following:

++ Deny or revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier is currently revoked under a different name, numerical identifier or business identity, and the applicable reenrollment bar period has not expired.

++ Revoke a provider's or supplier's Medicare enrollment—including all of the provider's or supplier's practice locations, regardless of whether they are part of the same enrollment—if the provider or supplier billed for services performed at or items furnished from a location that it knew or should have known did not comply with Medicare enrollment requirements.

++ Revoke a physician's or eligible professional's Medicare enrollment if he or she has a pattern or practice of ordering, certifying, referring or prescribing Medicare Part A or B services, items or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries or otherwise fails to meet Medicare requirements.

++ Increase the maximum reenrollment bar from 3 to 10 years, with exceptions.

++ Prohibit a provider or supplier from enrolling in the Medicare program for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in the Medicare program.

++ Revoke a provider's or supplier's Medicare enrollment if the provider or supplier has an existing debt that CMS refers to the United States Department of Treasury.

++ Require that to order, certify, refer or prescribe any Part A or B service, item or drug, a physician or, when permitted under state law, an eligible professional must be enrolled in Medicare in an approved status or have validly opted-out of the Medicare program. Also, the provider or supplier furnishing the Part A or B service, item or drug, as well as the physician or eligible professional who ordered, certified, referred or prescribed the service, item or drug, would have to maintain documentation for 7 years from the date of the service and furnish access to that documentation upon a CMS or Medicare contractor request.

++ Deny a provider's or supplier's Medicare enrollment application if—(1) the provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a particular state Medicaid program or any other federal health care program; or (2) the provider's or supplier's license is currently revoked or suspended in a state other than that in which the provider or supplier is enrolling.

3. Summary of Costs and Benefits

As explained in greater detail in sections III. and V. of this proposed rule, we estimate an average annual cost to providers and suppliers of $289.8 million in each of the first 3 years of this rule. This cost involves the information collection burden associated with the following proposals:

• The requirement that Medicare, Medicaid and CHIP providers and suppliers disclose certain current and prior affiliations.

• The requirement that a physician or, when permitted under state law, an eligible professional, be enrolled in Medicare in an approved status or have opted-out of the Medicare program to order, certify, refer or prescribe a Part A or B service, item or drug.

Other potential costs which we are unable to calculate are discussed in sections III. and V. of this proposed rule.

We believe there would be benefits, although unquantifiable, associated with this rule, because problematic providers would be kept out of or removed from Medicare, Medicaid, and CHIP, thus saving program dollars.

B. General Overview

1. Medicare

The Medicare program (title XVIII of the Act) is the primary payer of health care for approximately 54 million enrolled beneficiaries. Under section 1802 of the Act, a beneficiary may obtain health services from an individual or an organization qualified to participate in the Medicare program. Qualifications to participate are specified in statute and in regulations (see, for example, sections 1814, 1815, 1819, 1833, 1834, 1842, 1861, 1866, and 1891 of the Act; and 42 CFR chapter IV, subchapter G of the regulations, which concerns standards and certification requirements).

Providers and suppliers furnishing services must comply with the Medicare requirements stipulated in the Act and in our regulations. These requirements are meant to confirm compliance with applicable statutes, as well as to promote the furnishing of high quality care. As Medicare program expenditures

[1] Because section 6401(b) of the Affordable Care Act erroneously added a duplicate section 1902(ii) of the Act, the Congress enacted a technical correction in the Medicare and Medicaid Extenders Act of 2010 (MMEA) (Pub. L. 111–309) to redesignate section 1902(ii) of the Act as section 1902(kk) of the Act, a designation we will use in this proposed rule.

[2] Section 1304 of the Health Care and Education Reconciliation Act (Pub. L. 111–152) added a new paragraph (j)(4) to section 1866 of the Act, thus redesignating the subsequent paragraphs. Accordingly, we are interpreting the reference in section 1902(kk)(3) of the Act to ''disclosure requirements established by the Secretary under section 1866(j)(4)'' of the Act to mean the disclosure requirements described in section 1866(j)(5) of the Act.

have grown, we have increased our efforts to make certain that only qualified individuals and organizations are allowed to enroll in and maintain their enrollment in Medicare.

2. Medicaid and CHIP

The Medicaid program (title XIX of the Act) is a joint federal and state health care program that covers nearly 70 million low-income individuals. States have considerable flexibility in how they administer their Medicaid programs within a broad federal framework, and programs vary from state to state. CHIP (title XXI of the Act) is a joint federal and state health care program that provides health care coverage to more than 7.7 million children. In operating Medicaid and CHIP, states historically have permitted the enrollment of providers who meet the state requirements for program enrollment as well as any applicable federal requirements (such as those in 42 CFR part 455).

C. General Background on the Enrollment Process

1. The 2006 Provider Enrollment Final Rule

In the April 21, 2006 **Federal Register** (71 FR 20754), we published a final rule titled, ''Medicare Program; Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment.'' The final rule set forth certain requirements in 42 CFR part 424, subpart P that providers and suppliers must meet in order to obtain and maintain Medicare billing privileges. We cited in that rule sections 1102 and 1871 of the Act as general authority for our establishment of these requirements, which were designed for the efficient administration of the Medicare program.

2. The 2011 Provider Enrollment Final Rule

In the February 2, 2011 **Federal Register** (76 FR 5861),we published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers.'' This final rule implemented various Affordable Care Act provisions, including the following:

- Submission of application fees by institutional providers and suppliers as part of the Medicare, Medicaid, and CHIP provider enrollment processes.
- Establishment of Medicare, Medicaid, and CHIP provider enrollment screening categories and corresponding screening requirements.
- Imposition of temporary moratoria on the enrollment of new Medicare, Medicaid, and CHIP providers and suppliers of a particular type (or the establishment of new practice locations of a particular type) in a geographic area.

3. Form CMS–855—Medicare Enrollment Application

Under § 424.510, a provider or supplier must complete, sign, and submit to its assigned Medicare contractor the appropriate Form CMS–855 (OMB Control No. 0938–0685) application in order to enroll in the Medicare program and obtain Medicare billing privileges. The Form CMS–855, which can be submitted via paper or electronically through the Internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process, captures information about the provider or supplier that is needed for CMS or its contractors to determine whether the provider or supplier meets all Medicare requirements. The enrollment process helps ensure that unqualified and potentially fraudulent individuals and entities do not bill Medicare and that the Medicare Trust Funds are accordingly protected. Data collected during the enrollment process include, but are not limited to—(1) general identifying information (for example, legal business name, tax identification number); (2) licensure data; (3) practice locations; and (4) information regarding the provider's or supplier's owning and managing individuals and organizations. The application is used for a variety of provider enrollment transactions, including the following:

- Initial enrollment—The provider or supplier is—(1) enrolling in Medicare for the first time; (2) enrolling in another Medicare contractor's jurisdiction; or (3) seeking to enroll in Medicare after having previously been enrolled.
- Change of ownership—The provider or supplier is reporting a change in its ownership.
- Revalidation—The provider or supplier is revalidating its Medicare enrollment information in accordance with § 424.515.
- Reactivation—The provider or supplier is seeking to reactivate its Medicare billing privileges after it was deactivated in accordance with § 424.540.
- Change of information—The provider or supplier is reporting a change in its existing enrollment information in accordance with § 424.516.

Besides the aforementioned 2006 and 2011 final rules, we have made several other regulatory changes to 42 CFR part 424, subpart P to address various payment safeguard issues that have arisen.

D. Statutory Background on Medicare Requirements for Physicians and Eligible Professionals Who Order or Certify Services or Items

The Affordable Care Act addressed the problem of certain Medicare services and items being ordered or certified by physicians or eligible professionals (as the latter term is defined in section 1848(k)(3)(B) of the Act) who may not be qualified to do so. The Affordable Care Act included the following provisions:

- Section 6405(a) of the Affordable Care Act amended section 1834(a)(11)(B) of the Act to specify, with respect to DME suppliers, that payment may be made under section 1834(a)(11)(B) of the Act only if the written order for the item has been communicated to the DMEPOS supplier by a physician or eligible professional who is enrolled under section 1866(j) of the Act before delivery of the item.
- Section 6405(b) of the Affordable Care Act, as amended by section 10604 of the Affordable Care Act, amended sections 1814(a)(2) and 1835(a)(2) of the Act and specifies, with respect to Part A home health services, that payment may be made to providers of services if they are eligible and only if a physician enrolled under section 1866(j) of the Act certifies (and recertifies, as required) that the services are or were required in accordance with section 1814(a)(1)(C) of the Act. Section 1835(a)(2) of the Act specifies, with respect to Part B home health services, that payments may be made to providers of services if they are eligible and only if a physician enrolled under section 1866(j) of the Act certifies (and recertifies, as required) that the services are or were medically required in accordance with section 1835(a)(1)(B) of the Act.
- Section 6405(c) of the Affordable Care Act gives the Secretary the authority to extend the requirements of subsections (a) and (b) to all other categories of items or services under title XVIII of the Act, including covered Part D drugs as defined in section 1860D–2(e) of the Act, that are ordered, prescribed or referred by a physician or eligible professional enrolled under section 1866(j) of the Act.

In addition, section 6406(b)(3) of the Affordable Care Act amended section 1866(a)(1) of the Act to require that providers maintain and, upon request, provide to the Secretary, access to

written or electronic documentation relating to written orders or requests for payment for DME, certifications for home health services or referrals for other items or services written or ordered by the provider as specified by the Secretary. Under section 6406(a) of the Affordable Care Act, which amended section 1842(h) of the Act, the Secretary may revoke a physician's or supplier's enrollment if the physician or supplier fails to adhere to these requirements. .

E. Background on Disclosure of Affiliations for Medicare, Medicaid, and CHIP (Section 1866(j)(5) of the Act)

As previously mentioned, providers and suppliers must complete and submit (via paper or through Internet-based PECOS) a Form CMS–855 application to their Medicare contractor in order to enroll or revalidate their enrollment in the Medicare program. The Form CMS–855 requires the provider or supplier to disclose certain information, such as general identifying data (for example, legal business name), the provider's or supplier's practice locations, and the provider's or supplier's owning and managing employees and organizations.

In operating Medicaid and CHIP, states may have somewhat different enrollment processes, although all states must comply with the federal requirements in 42 CFR part 455, subparts B and E. Under 42 CFR part 455, subpart B, providers and disclosing entities must furnish disclosures regarding ownership and control of the provider or supplier entity, certain business transactions, and criminal convictions related to federal health care programs. States must also comply with their individual medical programs and procurement laws and rules, which may include additional provider or supplier disclosures.

Section 6401(a)(3) of the Affordable Care Act, which amended section 1866(j) of the Act to add new paragraph (5), states that a provider or supplier that submits an enrollment application or a revalidation application shall disclose (in a form and manner and at such time as determined by the Secretary) any current or previous affiliation (directly or indirectly) with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program (as defined in section 1128B(f) of the Act); has been excluded from participation from Medicare, Medicaid or CHIP; or has had its billing privileges denied or revoked. The Secretary may deny an application under section 1866(j)(5)(B) of the Act if the Secretary determines that the affiliation poses an undue risk of fraud, waste or abuse.

We mentioned earlier that section 6401(b) of the Affordable Care Act added a new section 1902(kk)(3) to the Act, mandating that states require providers and suppliers to comply with the same disclosure requirements established by the Secretary under section 1866(j)(5) of the Act. Section 6401(c) of the Affordable Care Act amended section 2107(e)(1) of the Act to make the requirements of section 1902(kk) of the Act, including the disclosure requirements, applicable to CHIP.

II. Provisions of the Proposed Regulations

A. Disclosure of Affiliations

We propose to carry out the legislative mandate of section 1866(j)(5) of the Act as previously discussed in section I.A. of this proposed rule.

Consistent with the text of section 1866(j)(5) of the Act, we believe that implementing these disclosure provisions would help combat fraud, waste, and abuse by enabling CMS and the states to: (1) Better track current and past relationships between and among different providers and suppliers; and (2) identify and take action on affiliations among providers and suppliers that pose an undue risk to Medicare, Medicaid, and CHIP. While the Form CMS–855 captures information on parties that have ownership or managerial interests in the enrolling or enrolled provider or supplier, it does not collect data about prior affiliations or about entities in which the provider or supplier (or its owning or managing individuals or organizations) has or had an interest. We believe that our knowledge of these affiliations and interests would greatly assist our program integrity efforts, for such data could reveal inter-provider schemes involving inappropriate behavior and lead to the denial or revocation of enrollment.

In November 2008, the Department of Health and Human Services Office of Inspector General (OIG) issued an Early Alert Memorandum titled ''Payments to Medicare Suppliers and Home Health Agencies Associated with 'Currently Not Collectible' Overpayments'' (OEI–06–07–00080). The memorandum stated that anecdotal information from OIG investigators and Assistant United States Attorneys indicated that DMEPOS suppliers with outstanding Medicare debts may inappropriately receive Medicare payments by, among other means, operating businesses that are publicly fronted by business associates, family members or other individuals posing as owners. In its study, the OIG selected a random sample of 10 DMEPOS suppliers in Texas that each had Medicare debt of at least $50,000 deemed currently not collectible (CNC) by CMS during 2005 and 2006. The OIG found that 6 of the 10 reviewed DMEPOS suppliers were associated with 15 other DMEPOS suppliers or home health agencies (HHAs) that received Medicare payments totaling $58 million during 2002 through 2007. Most associated DMEPOS suppliers had lost billing privileges by January 2005 and had accumulated a total of $6.2 million of their own CNC debt to Medicare. The OIG also found that most of the reviewed DMEPOS suppliers were connected to other DMEPOS suppliers and HHAs through shared owners or managers.

On March 2, 2011, the OIG testified before the Congress that fraud schemes in South Florida often rely on the use of networks of affiliations among fraudulent owners.[3] In those schemes, Medicare providers and suppliers disguise true ownership by the use of nominee owners in order to bill Medicare fraudulently on a temporary basis in order to evade detection. Providers and suppliers will—(1) hide their true ownership through the use of nominee owners; (2) bill the Medicare program for millions of dollars; and (3) close down and then take over another company, and then repeat the process in another location. In addition to OIG reports, our experience has found that networks of individuals and entities can be behind widespread fraud schemes; in some instances, shared owners were behind multiple providers and suppliers engaging in improper billings.

We have long shared these and other concerns the OIG has expressed regarding individuals and entities that enroll in Medicare (or own or operate Medicare providers or suppliers), accumulate large debts or otherwise engage in inappropriate activities, and depart the Medicare program voluntarily or involuntarily, yet continue their behavior by—(1) reentering the program in some capacity (for instance, as an owner); and/or (2) shifting their activities to another enrolled Medicare provider or supplier with which they are affiliated. To illustrate, a provider or supplier may engage in inappropriate billing, exit Medicare prior to detection, and then change its name or business identity in

[3] *https://oig.hhs.gov/testimony/docs/2011/perez_testimony_03022011.pdf.*

order to reenroll in Medicare under this new identity. Another example involves an entity that owns or manages several Medicare providers and suppliers. One of the providers or suppliers may be involved in abusive behavior with the approval or at the instigation of that owner or managing entity. In this example, if the abusive provider's enrollment is revoked, the owning/managing entity shifts its behavior to another of its enrolled entities.

In these situations, and absent the owning or managing individual's or organization's felony conviction, exclusion from Medicare by the OIG or debarment from participating in any federal procurement or non-procurement program, CMS does not currently have a regulatory basis to prevent such individuals or entities from continuing their activities through other enrolled or newly enrolling providers and suppliers. Put another way, providers and suppliers currently can be denied, revoked or terminated from participating in Medicare, Medicaid or CHIP; but absent a felony conviction, exclusion or debarment, their owners and managers can often remain as direct or indirect participants in these programs. Consider this illustration: Individual X owns 100 percent of three enrolled DMEPOS suppliers, each of which has submitted a revalidation application to Medicare. Individual X completes each application. He submits false information on one application in order to retain that supplier's Medicare enrollment, but not on the other two applications. CMS revokes the first DMEPOS supplier's enrollment under § 424.535(a)(4). However, we cannot revoke the other two suppliers because false information was not submitted on their applications; this means that two Medicare suppliers whose owner has furnished false information to Medicare are still enrolled in the program.

We believe that we must address this and similar situations. In many cases, the owners and managers of fraudulent entities hide behind the organizational structure itself when in fact they are, for purposes of their behavior, one in the same. This proposed rule would allow CMS to take immediate action against such persons and entities to ensure that they do not continue to use the provider or supplier organization as a shield for their conduct. If finalized, the proposal would help protect the Medicare Trust Funds, the taxpayers, Medicare beneficiaries, and honest and legitimate Medicare providers and suppliers. The changes described later in this section serve these goals by implementing section 1866(j)(5) of the Act. We further propose applying these changes to Medicaid and CHIP, such that states must require providers and suppliers to comply with the same disclosure requirements established by the Secretary.

1. Medicare

a. Definition of Affiliation

In § 424.502, we propose to define ''affiliation'' as meaning, for purposes of applying § 424.519, any of the following:

- A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.
- A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.
- An interest in which an individual or entity exercises operational or managerial control over or directly or indirectly conducts the day-to-day operations of another organization (including, for purposes of § 424.519 only, sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.
- An interest in which an individual is acting as an officer or director of a corporation.
- Any reassignment relationship under § 424.80.

The first four types of interests are consistent with the definitions of—(1) ''owner'' and ''managing employee'' in § 424.502; and (2) ''ownership or control interest'' in section 1124(a)(3) of the Act. We also note that consistent with sections 1124 and 1124A of the Act, entities and individuals that have one or more of these four interests in an enrolling or enrolled Medicare provider or supplier must be reported on the provider's or supplier's Form CMS–855 enrollment application. Likewise, reassignment relationships must be reported to Medicare via the Form CMS–855R (OMB Control No. 0938–1179); this form facilitates the reassignment of benefits from a physician or non-physician practitioner to another Medicare provider or supplier. To make certain that there is uniformity with these other reporting requirements and that we are aware of prior and current relationships that could present risks of fraud, waste or abuse, we believe that the ''affiliation'' definition should include these five interests.

We believe there is a sufficiently close relationship between the reassignor (the physician or practitioner) and the reassignee (the provider or supplier) to warrant including reassignments within the definition of ''affiliation''. Indeed, a W–2 employee or independent contractor may have a closer day-to-day relationship with the entity or person he or she works for and reassigns benefits to than, for instance, an indirect owner has with an entity in which he or she has a 5 percent ownership interest. We request comment on the regularity of close reassignor and reassignee relationships and whether inclusion of these relationships is likely to lead to additional information that may prevent fraud, waste and abuse.

b. Disclosable Events (§ 424.519)

In new § 424.519, we propose in paragraph (b) that a provider or supplier that is submitting an initial or revalidating Form CMS–855 application must disclose whether it or any of its owning or managing employees or organizations (consistent with the terms ''owner'' and ''managing employee'' as defined in § 424.502) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid or CHIP provider or supplier that—

- Currently has an uncollected debt to Medicare, Medicaid or CHIP, regardless of—(1) the amount of the debt; (2) whether the debt is currently being repaid (for example, as part of a repayment plan); or (3) whether the debt is currently being appealed. For purposes of § 424.519 only, and as stated in proposed § 424.519(a), the term ''uncollected debt'' only applies to—
  - ++ Medicare, Medicaid or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier;
  - ++ Civil money penalties (CMP) (as defined in § 424.57(a)); and
  - ++ Assessments (as defined in § 424.57(a)).
- Has been or is subject to a payment suspension under a federal health care program (as that term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;
- Has been or is excluded from participation in Medicare, Medicaid or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed (although section 1866(j)(5) of the Act states ''has been excluded,'' we believe it is appropriate to clarify that a current exclusion is also a disclosable event); or
- Has had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated, regardless of—(1) the reason for the denial, revocation or

termination; (2) whether the denial, revocation or termination is currently being appealed; or (3) when the denial, revocation or termination occurred or was imposed. For purposes of § 424.519 only, and as stated in proposed paragraph (a), the terms ''revoked,'' ''revocation,'' ''terminated,'' and ''termination'' would include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid or CHIP enrollment to avoid a potential revocation or termination.

Regarding proposed § 424.519(b), it is important to note that the affiliated provider or supplier need not have been enrolled in Medicare, Medicaid or CHIP when the disclosing party had its relationship with the affiliated provider or supplier. To illustrate, assume Provider A sold its 30 percent interest in an affiliated provider in January 2016. In March 2016, the affiliated provider enrolled in Medicare yet had its enrollment revoked in September 2016. In April 2017, Provider A applied for Medicare enrollment. If we limited the reporting of affiliations to periods when the affiliated provider was enrolled in Medicare, Medicaid or CHIP, Provider A would not have to report—and we would perhaps not learn of—its relationship with a provider that was revoked only 8 months after the affiliation ended. We believe that such information would be valuable in helping us determine whether the affiliation poses an undue risk of fraud, waste or abuse.

We also propose that the § 424.519(b) event (hereafter referred to as the ''disclosable event'') could have occurred or been imposed either before the affiliation began or after it ended. If disclosure of an affiliation were restricted to the time period of the disclosing party's relationship with the affiliated provider, we might remain unaware of situations where, for instance—(1) a disclosing party sold its majority interest in an affiliated provider or supplier that was terminated from Medicaid 2 months after the sale; and (2) a 40 percent owner of a Medicare-enrolled affiliated provider engages in questionable billing practices, sells its share, and seeks to separately enroll in Medicare, shortly after which the affiliated provider is notified that it has a large Medicare debt that must be repaid. We are particularly concerned about the latter scenario; as previously mentioned, we have seen instances where providers and suppliers with significant overpayments close down their businesses and attempt to enroll under other business identities.

All affiliations that meet the requirements of § 424.519(b) would have to be reported. To illustrate, suppose a revalidating Medicare provider has three owners: A, B, and C. Owner A had an affiliation 30 months ago with a revoked Medicare provider. Owner B had an affiliation 2 years ago with a terminated Medicaid provider. Owner C currently serves as a management company for a CHIP provider with an uncollected debt. Each of these three affiliations would have to be disclosed on the revalidating provider's Form CMS–855 application.

We believe the actions identified in § 424.519(b) should be reported regardless of whether an appeal is pending. We want to avoid situations where an initially enrolling provider or supplier would not have to disclose, for example, an affiliated provider that was revoked from Medicare 6 months ago (based on a felony conviction) because the revocation is under appeal; without this information, the provider or supplier in question might become enrolled in Medicare without CMS knowing of its relationship with a recently convicted affiliated provider or supplier. Conversely, actions that are overturned on appeal or otherwise reversed need not be reported. For purposes of this rule only, the reversal of a disclosable event would effectively nullify said event.

Section 1866(j)(5) of the Act refers to the disclosure of current or previous affiliations ''directly or indirectly.'' We believe this concept should apply to ownership interests. Consequently, affiliations involving a 5 percent or greater indirect ownership interest must be disclosed to the same extent as those involving direct ownership. Consider the following example: A newly-enrolling provider listed in section 2 of the Form CMS–855A (OMB Control No. 0938–0685) application is wholly (100 percent) owned by Company A. Company B wholly owns Company A. Companies C and D each own 50 percent of Company B. Here, Company A is considered a direct owner of the newly-enrolling provider because it actually owns the assets of the business. Companies B, C, and D are considered indirect owners of the provider. Unlike Company A, they do not own the provider's assets. However, Company B directly owns Company A's assets, while Companies C and D own Company B's assets.

We believe that the disclosure of indirect ownership interests is important. We have seen cases where the direct owner of the provider or supplier is a mere holding company, while the actual management and control of the provider or supplier is exercised by the provider's or supplier's indirect owner(s). Restricting the disclosure requirements to direct owners could deprive CMS of important information about the entities that are actually running the provider's or supplier's operations.

We are proposing a ''look-back'' period of 5 years for previous affiliations. A sufficient look-back period is necessary because a past affiliation could be an indicator of a disclosing party's future behavior. For instance, suppose a physician who is enrolling in Medicare was a 50 percent owner of an affiliated provider from July 2013 through December 2013. In October 2013, the affiliated provider's Medicare enrollment was revoked for falsifying information on a Form CMS–855 change of information request. Considering the physician's degree of involvement with the affiliated provider, we believe this scenario would raise questions regarding the level of risk posed to the Medicare program. In short, a 5-year look-back period would divulge to us past situations that could present future concerns. We believe that a 5-year look-back period would be less onerous for providers and suppliers than, for instance, a 10-year period, while still providing us with enough information to make a proper decision as to whether an undue risk of fraud, waste or abuse exists. For purposes of this rule, the look-back period would be the 5-year timeframe prior to the date on which the disclosing provider or supplier submits its Form CMS–855; thus, the affiliation must have occurred within the 5-year period preceding the date on which the application is submitted. However, we note that only part of the affiliation period would have to have occurred inside the 5-year timeframe; the entire affiliation (from beginning to end) need not fall within the 5-year window. To illustrate, if an affiliation began 8 years prior to enrollment and ended 4 years before enrollment, it would have to be reported because at least part of the affiliation occurred within the previous 5 years.

While we propose to limit disclosure to affiliations that occurred within the previous 5 years, the event triggering the disclosure (for example, a revocation) could have occurred or been imposed more than 5 years previously. In other words, we are proposing a 5-year look-back period for the affiliation; but we are not proposing a specific look-back period for when the disclosable event occurred or was imposed. Consider the following examples:

- A provider is submitting an initial Form CMS–855A application in May 2017. The provider was the owner of a

Medicaid-enrolled group practice from August 2014 to January 2015. The group practice had its Medicaid enrollment terminated in January 2010. Although the disclosable event (the termination) was imposed more than 5 years ago, it must be reported because the affiliation occurred within the previous 5 years.

• A supplier is submitting a Form CMS–855B (OMB Control No. 0938–0685) revalidation application. The supplier currently has a managerial interest in an ambulance company that was subject to a Medicare payment suspension 8 years ago. The affiliation and the payment suspension must be disclosed even though the latter was imposed outside of the 5-year affiliation look-back period.

Our proposed 5-year look-back limit for affiliation disclosures, as already indicated, is partly intended to reduce the burden on providers and suppliers. Yet we believe that a similar time restriction on the underlying event that is triggering the disclosure could present program integrity concerns. To illustrate, assume Individual X purchased Medicare Provider Y in 2007. In 2009, Provider Y was revoked from Medicare for falsifying information on its Form CMS–855A revalidation application. In 2017, Provider Z submits a Form CMS–855A initial application; Individual X (which still owns revoked Provider Y) is the sole owner of Provider Z. If we restricted the look-back period for disclosable events to 5 years rather than having an unlimited period, we may not learn that the sole owner of an enrolling provider was (and remains) the owner of another provider that was revoked for furnishing false information to Medicare. Even if the action happened more than 5 years ago, it could still raise concerns about the potential risk the newly enrolling provider poses. For this reason, we must retain the flexibility to address a variety of factual scenarios, regardless of when the underlying event occurred or was imposed.

If the affiliated provider or supplier had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated, this must be reported regardless of the reason for the denial, revocation or termination. Since all denial, revocation, and termination reasons are of concern to us, we do not believe certain reasons should be excluded from disclosure. Nonetheless, we seek comment on whether disclosure should be restricted to certain denial, revocation and termination reasons and, if so, what those reasons should be.

We also propose to define the term ''uncollected debt'' in proposed § 424.519(b) as—

++ Medicare, Medicaid or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier;

++ CMPs (as defined in § 424.57); and

++ Assessments (as defined in § 424.57).

We are proposing this definition, which is included in proposed § 424.519(a), because it is consistent with our requirements for DMEPOS surety bond coverage under § 424.57(d). Under § 424.57(d)(5), a DMEPOS supplier's surety bond must guarantee that the surety will—within 30 days of receiving written notice from CMS containing sufficient evidence to establish the surety's liability under the bond of unpaid claims, CMPs or assessments—pay CMS a total of up to the full penal amount of the bond in the amounts described in § 424.57(d)(5)(i). We believe it is appropriate to use a concept of unpaid debt for which there is precedent in 42 CFR part 424. However, we seek comment on the following issues regarding our proposed definition of ''uncollected debt'': (1) Whether there should be a threshold for the level of debt that would need to be reported; (2) whether a provider or supplier should be exempt from reporting an uncollected debt if it is complying with a repayment plan; and (3) whether the level of reporting burden is low enough to merit collection of this information without any threshold or exemption.

Section 1866(j)(5)(B) of the Act states that if an undue risk of fraud, waste or abuse is found, the Secretary shall deny the application in question. Revocation of enrollment is not mentioned. However, we believe that section 1866(j)(5)(A) of the Act's reference to a revalidation application, which can only be submitted by an enrolled provider or supplier, suggests that a provider's or supplier's Medicare enrollment may be revoked if an undue risk is found. Furthermore, we believe that having the ability to revoke the enrollment of providers or suppliers with affiliations that we have determined to pose an undue risk is necessary to protect the integrity of the Medicare program. Therefore, we are proposing to use our general rulemaking authority in sections 1102 and 1871 of the Act to—(1) require the submission of a Form CMS–855 change of information request to report a new or changed affiliation (per proposed § 424.519(h)); and (2) permit revocation (per proposed § 424.519(i)) if an undue risk is found outside of the provider's or supplier's submission of an initial, revalidating or change of information application.

We believe that the terms ''revoked,'' ''revocation,'' ''terminated,'' and ''termination,'' for purposes of disclosure under § 424.519(b), should include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid or CHIP enrollment to avoid a potential revocation or termination; this is referenced in proposed § 424.519(a). As explained in more detail in section II.B.11. of this proposed rule, we have seen instances where the provider or supplier engages in inappropriate behavior, recognizes that its enrollment may soon be revoked, and then voluntarily withdraws from Medicare prior to the imposition of a revocation so as to avoid the revocation itself as well as a subsequent reenrollment bar under § 424.535(c). (See section II.B.4. of this proposed rule for more information on reenrollment bars.) Since the provider or supplier is not revoked from Medicare, it could immediately reenroll in Medicare without having to wait until the reenrollment bar expires. We believe such behavior poses a risk to the Medicare program in that the provider or supplier is seeking to avoid Medicare rules and, in the process, possibly reenter the Medicare program to continue its improper activities. We thus believe that for purposes of § 424.519(b), such actions should be included within the category of ''revocations'' and ''terminations.''

c. Affiliation Data, ''Reasonableness'' Standard, and Mechanism of Disclosure

In § 424.519(c), we propose to require the disclosure of the following information about the affiliation:

• General identifying data about the affiliated provider or supplier. This would include the following:

++ Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

++ ''Doing business as'' name (if applicable).

++ Tax identification number.

++ National Provider Identifier (NPI).

• Reason for disclosing the affiliated provider or supplier (for example, uncollected Medicare debt or Medicaid payment suspension).

• Specific data regarding the relationship between the affiliated provider or supplier and the disclosing party. Such data would include the—(1) length of the relationship; (2) type of relationship (for example, an owner of the initially enrolling provider or supplier was a managing employee of the affiliated provider or supplier); and (3) degree of affiliation (for example,

percentage of ownership; whether the ownership interest was direct or indirect; the individual's specific managerial position; the scope of the individual's or entity's managerial duties; whether the partnership interest was general or limited).

• If the affiliation has ended, the reason for the termination.

We believe the information in proposed § 424.519(c) is necessary so that we can—(1) conclusively identify the affiliated provider or supplier and the disclosing party's relationship therewith; and (2) assess the risk of fraud, waste or abuse that the affiliation poses.

However, we also believe it is appropriate to build a ''reasonableness'' standard into § 424.519(b) and (c), such that we would require particular information to be reported only if the disclosing provider or supplier knew or should reasonably have known of said data. For instance, while we believe a provider or supplier would typically know of a past affiliation, it may not necessarily know whether a § 424.519(b) action occurred or was imposed after the affiliation ended. We will review each situation on a case-by-case basis in determining whether the disclosing entity knew or should have known of the information.

d. Affiliation and Disclosure Examples, Methodology, and Consequences of Non-Disclosure

(1) Examples

The following are examples of when the information described in § 424.519 would or would not have to be disclosed.

Example 1: Physician Group X was a 10 percent indirect owner of a medical provider (the affiliated provider) between January 2015 and March 2015. The affiliated provider was not enrolled in Medicare during this timeframe because its Medicare enrollment had been revoked in December 2014. Physician Group X is revalidating its Medicare enrollment in January 2017. Though the affiliated provider was not enrolled in Medicare during the period of affiliation, Physician Group X would need to disclose the affiliation as part of its revalidation because—(1) it was a 5 percent or greater owner of a formerly enrolled Medicare provider; (2) the formerly enrolled Medicare provider had its Medicare enrollment revoked; and (3) the affiliation occurred within the previous 5 years.

Example 2: Ambulance Company X had a limited partnership interest in a Medicaid provider (the affiliated provider) between February 2015 and April 2015. The affiliated provider voluntarily terminated its Medicaid enrollment in May 2015. In June 2015, the state notified the affiliated provider that it had a large Medicaid overpayment that must be repaid. In September 2017, Ambulance Company X is enrolling in Medicare for the first time. The affiliated provider's debt is still outstanding. Ambulance Company X must report the affiliation as part of its initial Medicare enrollment because—(1) it had a partnership interest in an affiliated Medicaid provider; (2) the formerly enrolled Medicaid provider has an uncollected debt; and (3) the affiliation occurred within the previous 5 years.

Example 3: In February 2017, Provider X is preparing to submit a Form CMS–855 application to enroll in Medicare. Between January 2014 and June 2014, one of its owners, Owner Y, functioned as a managing company for Home Health Agency Z (the affiliated provider). Home Health Agency Z attempted to enroll in Medicare in December 2013, but its application was denied. Provider X would have to disclose this information as part of its enrollment because—(1) one of its 5 percent or greater owners (Owner Y) was a managing employee (as that term is defined in § 424.502) of Home Health Agency Z, whose Medicare enrollment application was denied; and (2) the affiliation occurred within the previous 5 years.

Example 4: In March 2017, Physician Group X is revalidating its Medicare enrollment information. X was a 50 percent owner of a Medicaid provider (the affiliated provider) between January 2008 and December 2008. The affiliated provider's enrollment was revoked in April 2009. Physician Group X would not need to disclose this information because the affiliation ended more than 5 years ago.

Example 5: In June 2017, Provider Y is initially enrolling in Medicare. Between May 2014 and July 2014, Provider Y had a 25 percent ownership interest in a medical group (the affiliated provider) whose Medicare enrollment was revoked in August 2014. However, the revocation was reversed on appeal prior to Provider Y's application submission. Though the affiliation occurred within the previous 5 years, Provider Y need not report it because the revocation was overturned on appeal.

Considering the statute's explicit flexibility regarding disclosure methodology, we are interested in comments on proposed § 424.519(b) and (c), particularly:

• Whether the types of disclosable affiliations should include additional ownership or managerial interests or other relationships;

• Whether 5 years is an appropriate look-back period for affiliations;

• Whether exclusions, denials and revocations that are being appealed should be exempt from disclosure.

• Whether we should establish a ''reasonableness'' test, whereby we explain what constitutes a sufficient effort to obtain information in the context of the ''should reasonably have known'' standard;

• If we establish such a test, what the specific elements of this standard should be (for example, what constitutes a reasonable inquiry; the minimum steps that the provider must undertake in researching information); and

• Whether there should be a lookback period for disclosable events and, if so, how long (for example, 15 years, 10 years, 7 years).

(2) Methodology and Non-Disclosure

In § 424.519(d), we propose that the information required under § 424.519 be furnished to CMS or its contractors via the Form CMS–855 application (paper or the Internet-based PECOS enrollment process). This is to ensure that all enrollment information continues to be reported via a single vehicle.

In § 424.519(e), we propose that the disclosing provider's or supplier's failure to fully and completely furnish the information specified in § 424.519(b) and (c) when the provider or supplier knew or should reasonably have known of this information may result in either of the following:

• The denial of the provider's or supplier's initial enrollment application under § 424.530(a)(1) and, if applicable, § 424.530(a)(4).

• The revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(1) and, if applicable, § 424.535(a)(4).

e. Undue Risk

In § 424.519(f), we propose that upon receiving the information described in § 424.519(b) and (c) (and consistent with section 1866(j)(5)(B) of the Act), we would determine whether any of the disclosed affiliations poses an undue risk of fraud, waste or abuse. The following factors would be considered:

• The duration of the disclosing party's relationship with the affiliated provider or supplier.

• Whether the affiliation still exists and, if not, how long ago it ended.

• The degree and extent of the affiliation (for example, percentage of ownership).

• If applicable, the reason for the termination of the affiliation.

• Regarding the disclosable event—

++ The type of action (for example, payment suspension);

++ When the action occurred or was imposed;

++ Whether the affiliation existed when the action (for example, revocation) occurred or was imposed;

++ If the action is an uncollected debt—(1) the amount of the debt; (2) whether the affiliated provider or supplier is repaying the debt; and (3) to whom the debt is owed (for example, Medicare); and

++ If a denial, revocation, termination, exclusion or payment

suspension is involved, the reason for the action (for example, felony conviction; failure to submit complete information).

• Any other evidence that CMS deems relevant to its determination.

In summary, these factors would focus largely, though not exclusively, on—(1) the length and period of the affiliation; (2) the nature and extent of the affiliation; and (3) the type of disclosable event and when it occurred. A closer, longer, and more recent affiliation involving, for instance, an excluded provider or a large uncollected debt might pose a greater risk to the Medicare program than a brief affiliation that occurred 5 years ago. Yet it should not be assumed that the latter situation would never pose an undue risk. We are not prepared in this proposed rule to make specific conclusions as to what would constitute an undue risk. Affiliations vary widely. For this reason, we must retain the flexibility to deal with each situation on a case-by-case basis, utilizing the aforementioned factors. We do, nevertheless, solicit comment on the following issues related to these factors:

• Whether additional factors should be considered.

• Which, if any, of the proposed factors should not be considered.

• Which, if any, factors should be given greater or lesser weight than others.

In § 424.519(g), we propose that a CMS determination that a particular affiliation poses an undue risk of fraud, waste or abuse would result in, as applicable, the denial of the provider's or supplier's initial enrollment application under new § 424.530(a)(13) or the revocation of the provider's or supplier's Medicare enrollment under new § 424.535(a)(19). We stress that an actual finding of fraud, waste or abuse would not be necessary for § 424.519(g) to be invoked. Only a determination that an ''undue risk'' of fraud, waste or abuse exists would be required.

On December 5, 2014, we published in the **Federal Register** (79 FR 72499) a final rule titled ''Medicare Program; Requirements for the Medicare Incentive Reward Program and Provider Enrollment.'' In that rule, we finalized new § 424.530(a)(6)(ii), which states that CMS may deny enrollment if the enrolling provider, supplier or owner (as defined in § 424.502) thereof was previously the owner of a provider or supplier that had a Medicare debt that existed when the latter's enrollment was voluntarily terminated, involuntarily terminated or revoked, and all of the following criteria are met:

• The owner left the provider or supplier with the Medicare debt within 1 year before or after that provider or supplier's voluntary termination, involuntary termination or revocation.

• The Medicare debt has not been fully repaid.

• CMS determines that the uncollected debt poses an undue risk of fraud, waste or abuse.

We are not proposing to modify this provision in this rule. Our proposed affiliation provision would supplement but not supplant § 424.530(a)(6)(ii). We would be able to deny enrollment under § 424.530(a)(6)(ii), § 424.530(a)(13) or both if the conditions for the denial reason(s) are met.

f. Additional Affiliation Provisions

In § 424.519, we propose in paragraph (h)(1) that providers and suppliers must report new or changed information regarding existing affiliations, consistent with our requirement in § 424.516 to submit changes in enrollment information; this would include the reporting of new affiliations. However, under paragraph (h)(2) providers and suppliers would not be required to report either of the following:

• New or changed information regarding past affiliations (except as part of a Form CMS–855 revalidation application).

• Affiliation data in that portion of the Form CMS–855 that collects affiliation information if the same data is being reported in the ''owning or managing control'' (or its successor) section of the Form CMS–855.

We believe that requiring providers and suppliers to report new or changed information regarding past affiliations would impose an unnecessarily excessive burden; providers and suppliers would have to constantly monitor and track information changes involving parties with whom they, their owners or their managers no longer have a relationship. Regarding the second exception, we believe this would limit duplicate reporting and ease the burden on providers and suppliers.

In § 424.519(i), we propose that CMS may apply proposed § 424.530(a)(13) or § 424.535(a)(19) (as applicable) to situations where a disclosable affiliation poses an undue risk of fraud, waste or abuse, but the provider or supplier has not yet disclosed or is not required at that time to disclose the affiliation to CMS. We believe that section 1866(j)(5) of the Act is aimed at protecting Medicare, Medicaid and CHIP against undue risks of fraud, waste or abuse at all times, not merely upon a provider's or supplier's initial enrollment, revalidation or reporting of new or changed affiliation information. There may be time lapses between these events during which a particular affiliation poses an undue risk based on changed circumstances. Consider the following examples:

Example 1: An enrolled disclosing provider had an affiliation with Supplier Q that ended on January 1. On May 1, Q's Medicare enrollment was revoked. As this is a past affiliation, the provider under § 424.519(h) need not disclose the revocation as part of a Form CMS–855 change of information. However, we should have the authority to consider whether, in light of Q's revocation—(1) the recently terminated affiliation poses an undue risk of fraud, waste or abuse; and (2) the provider's enrollment should accordingly be revoked.

Example 2: Three months after § 424.519's effective date but before the Form CMS–855 is updated to capture affiliation data, we receive information that Medicare-enrolled Provider X owns 35 percent of a Medicaid supplier that—(1) was recently terminated under § 455.106(c)(2) for concealing information that must be disclosed per § 455.106(a), and (2) up until 4 months ago, owned one-half of a Medicare supplier whose enrollment was recently revoked. Although X need not report this information until the Form CMS–855 is revised, we should not have to wait to take action under § 424.519. Permitting a provider or supplier with an affiliation that we know poses an undue risk of fraud, waste or abuse to enroll or remain enrolled in Medicare would be inconsistent with section 1866(j)(5) of the Act.

As with all other Medicare denials and revocations, these providers and suppliers would be notified if their enrollment is denied or revoked per § 424.519(i).

g. Conclusion

To summarize, the process for disclosing information under § 424.519 would be as follows.

First, the provider or supplier must determine whether it or any of its owning or managing individuals or organizations has or has had an affiliation (as defined in § 424.502).

Second, if an affiliation exists or existed within the applicable 5-year timeframe, the provider or supplier must determine whether a disclosable event in § 424.519(b) has occurred. If it has, it must be disclosed.

Third, we would determine whether the affiliation poses an undue risk of fraud, waste or abuse. If it does, the provider's or supplier's application would be denied or, if applicable, the provider's or supplier's enrollment would be revoked. The provider or supplier may appeal the denial or revocation under § 405.874 or part 498, respectively.

2. Medicaid

Consistent with our discussion in section II.A.1.a. of this proposed rule and for the reasons stated therein, we propose to revise the Medicaid provisions in 42 CFR part 455.

In § 455.101, we propose to add the same definition of ''affiliation'' that we are proposing to add to § 424.502, with the exception of the paragraph regarding ''reassignment.'' Section § 424.80 only applies to Medicare. However, we propose to include payment assignments under § 447.10(g) within the definition of ''affiliation'' in § 455.101. Under § 447.10(g), payment for services provided by an individual practitioner may be made to—

++ The employer of the practitioner, if the practitioner is required as a condition of employment to turn over his fees to the employer;

++ The facility in which the service is provided, if the practitioner has a contract under which the facility submits the claim; or

++ A foundation, plan or similar organization operating an organized health care delivery system, if the practitioner has a contract under which the organization submits the claim.

As with Medicare reassignments, we believe that the relationships described in § 447.10(g) are sufficiently close to warrant their inclusion within the definition of ''affiliation'' in § 455.101; again, a W–2 employee or independent contractor may have a closer day-to-day relationship with the individual or organization he or she works for than, for instance, an indirect owner has with an entity in which he or she has a 5 percent ownership interest. We also note that these provisions are similar to those in § 424.80.

In revised § 455.103, we propose that a state plan must provide that the requirements of §§ 455.104 through 455.107 are met. Section 455.103 currently only references §§ 455.104 through 455.106. Our revision would include a reference to new § 455.107.

In new § 455.107, we propose several paragraphs.

In paragraph (b), we propose that a provider that is submitting an initial or revalidating Medicaid application must disclose whether it or any of its owning or managing employees or organizations (consistent with the definitions of ''person with an ownership or control interest'' and ''managing employee'' in § 455.101) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid or CHIP provider or supplier that—

• Currently has an uncollected debt to Medicare, Medicaid or CHIP, regardless of—(1) the amount of the debt; (2) whether the debt is currently being repaid (for example, as part of a repayment plan); or (3) whether the debt is currently being appealed. For purposes of § 455.107 only, and as stated in proposed § 455.107(a), the term ''uncollected debt'' only applies to—

++ Medicare, Medicaid or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier;

++ CMPs (as defined in § 424.57(a)); and

++ Assessments (as defined in § 424.57(a));

• Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

• Has been or is excluded from participation in Medicare, Medicaid or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

• Has had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated, regardless of—(1) the reason for the denial, revocation or termination; (2) whether the denial, revocation or termination is currently being appealed; or (3) when the denial, revocation or termination occurred or was imposed. For purposes of § 455.107 only, the terms ''revoked,'' ''revocation,'' ''terminated,'' and ''termination'' would include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid or CHIP enrollment to avoid a potential revocation or termination. This clarification is included in proposed § 455.107(a).

In paragraph (c), we propose that the following information about the affiliation must be disclosed:

• General identifying data about the affiliated provider or supplier. This would include the following:

++ Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

++ ''Doing business as'' name (if applicable).

++ Tax identification number.

++ NPI.

++ Reason for disclosing the affiliated provider or supplier (for example, uncollected CHIP debt; payment suspension).

++ Specific data regarding the affiliation relationship. Such data would include the—(1) length of the relationship; (2) type of relationship; and (3) degree of affiliation.

++ If the affiliation has ended, the reason for the termination.

In paragraph (d), we propose that the information described in § 455.107(b) and (c) must be furnished to the state in a manner prescribed by the state.

In paragraph (e), we propose that the disclosing provider's failure to fully and completely furnish the information in § 455.107(b) and (c) when the provider knew or should reasonably have known of this information may result in—

• The denial of the provider's initial enrollment application; or

• The revocation of the provider's Medicaid or CHIP enrollment.

In paragraph (f), we propose that upon receiving the information described in § 455.107(b) and (c), the state, in consultation with CMS, would determine whether any of the disclosed affiliations poses an undue risk of fraud, waste or abuse. The state, in consultation with CMS, would consider the following factors in its determination:

• The duration of the disclosing party's relationship with the affiliated provider or supplier.

• Whether the affiliation still exists and, if not, how long ago it ended.

• The degree and extent of the affiliation.

• If applicable, the reason for the termination of the affiliation.

• Regarding the affiliated provider's or supplier's disclosable event—

++ The type of action;

++ When the action occurred or was imposed; and

++ Whether the affiliation existed when the action occurred or was imposed.

++ If the action is an uncollected debt—(1) the amount of the debt; (2) whether the affiliated provider or supplier is repaying the debt; and (3) to whom the debt is owed (for example, Medicare);

• If a denial, revocation, termination, exclusion or payment suspension is involved, the reason for the action; and

• Any other evidence that the state, in consultation with CMS, deems relevant to its determination.

In paragraph (g), we propose that a determination that a particular affiliation poses an undue risk of fraud, waste or abuse results in, as applicable, the denial of the provider's initial enrollment application or the termination of the provider's Medicaid or CHIP enrollment.

In paragraph (h), we propose the following:

• Providers would be required to report new or changed information regarding existing affiliations. This would include the reporting of any new affiliations.

• Providers would not be required to report new or changed information regarding past affiliations (except as part of a revalidation application).

In paragraph (i), we propose that the state, in consultation with CMS, may apply paragraph (g) to situations where a reportable affiliation poses an undue risk of fraud, waste or abuse, but the provider has not yet disclosed or is not required at that time to disclose the affiliation to the state.

c. CHIP

Section 2107(e) of the Act states that sections 1902(a)(77) and (kk) of the Act (which relate to Medicaid provider screening, oversight, and reporting requirements) apply to CHIP to the same extent that they apply to Medicaid. Therefore, we would apply our proposed Medicaid affiliation disclosure requirements to CHIP providers for two principal reasons. First, section 1866(j)(5) of the Act specifically references the need to disclose current and prior affiliations with CHIP providers. We believe it logically follows that CHIP providers should have to disclose similar affiliation information. Second, and for reasons already explained, the disclosure of affiliation information would assist our efforts in deterring fraud, waste, and abuse in CHIP.

Section 457.990(a) states that part 455, subpart P, applies to a state under Title XXI in the same manner as it applies to a state under Title XIX. We propose to revise § 457.990(a) such that § 455.107 would also apply to Title XXI. Paragraph (a) would thus read: ''(a) part 455, subpart E and § 455.107, of this chapter.''

B. Other Proposed Regulations Affecting the Medicare Program Only

Except as stated otherwise, the legal authorities for our proposals in section II.B, are as follows. First, sections 1102 and 1871 of the Act give the Secretary the authority to establish requirements for the efficient administration of the Medicare program. Second, section 1866(j) of the Act states that the Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers.

1. Revoked Under Different Name, Numerical Identifier or Business Identity

We propose in new § 424.530(a)(12) that CMS may deny a provider's or supplier's Medicare enrollment application if CMS determines that the provider or supplier is currently revoked under a different name, numerical identifier or business identity, and the applicable reenrollment bar period has not expired. Likewise, we propose in new § 424.535(a)(18) that CMS may revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier is revoked under a different name, numerical identifier or business identity.

As discussed in section II.A.1.a. of this proposed rule, we have identified instances in which a provider or supplier has its Medicare enrollment revoked but tries to evade the revocation and reenrollment bar by opening a new provider or supplier organization to effectively ''replace'' the revoked entity. The OIG indicated in the previously-mentioned memorandum that some providers and suppliers operate ''fronts,'' whereby associates, family members or other individuals pose as owners or managers of the entity on behalf of the persons who actually operate, run or profit from the business. We believe that such behavior must be stemmed, hence our proposed additions of §§ 424.530(a)(12) and 424.535(a)(18).

In determining whether a provider or supplier is in fact a currently revoked provider or supplier under a different name, numerical identifier or business identity, CMS would investigate the degree of commonality by considering the following factors:

• Owning and managing employees and organizations, regardless of whether they have been disclosed on the Form CMS–855 application (for the definitions of ''owner'' and ''managing employee'' in § 424.502 do not require the individual or organization to be listed on the Form CMS–855 in order to qualify as such).

• Geographic location (for example, same city or county).

• Provider or supplier type (for example, same provider type).

• Business structure.

• Any evidence indicating that the two parties are similar or that the provider or supplier was created to circumvent the revocation or the reenrollment bar.

It should not be assumed that having different owners, locations or business structures would automatically result in a finding that the two are not the same. CMS would consider any evidence indicating whether the entities are effectively identical or that the new entity was established to evade the revocation or reenrollment bar. Therefore, even if several factors suggest that the entities may be distinct, we would reserve the right to apply §§ 424.530(a)(12) or 424.535(a)(18) if we find evidence of evasion.

Unlike with § 424.519(f), no finding of ''undue risk'' would be required in a determination under §§ 424.530(a)(12) or 424.535(a)(18). We could invoke the latter two provisions even if there is no finding that the revoked entity, the newly enrolling entity or the currently enrolled entity (as applicable) poses an undue risk of fraud, waste or abuse. This is because we are not relying upon section 1866(j)(5) of the Act as authority for these two provisions. We are instead relying upon our general rulemaking authority in sections 1102 and 1871, as well as 1866(j) of the Act, which provides specific authority with respect to the enrollment process for providers and suppliers.

2. Non-Compliant Practice Location

We propose in new § 424.535(a)(20) that we may revoke a provider's or supplier's Medicare enrollment—including all of the provider's or supplier's practice locations, regardless of whether they are part of the same enrollment—if the provider or supplier billed for services performed at or items furnished from a location that it knew or should have known did not comply with Medicare enrollment requirements.

CMS has identified examples of providers or suppliers operating from multiple practice locations (either as part of the same enrollment or, for DMEPOS suppliers and independent diagnostic testing facilities (IDTFs), through separately enrolled locations), of which one or more of the locations does not meet Medicare enrollment requirements. For instance, a particular location may not be operational, does not comply with certain DMEPOS or IDTF supplier standards or is otherwise noncompliant, yet the provider or supplier continues to perform services at or furnish items from this location (or claims to do so) when it knows or should know that the location does not meet Medicare enrollment requirements. We have seen this with providers and suppliers that operate locations that either do not exist or are false storefronts, meaning that the location appears legitimate from the outside but is in fact a vacant site or a nonmedical business.

We have conducted site visits uncovering several similar situations and revocations of providers and suppliers locations have accordingly ensued. However, we believe more must be done. Dishonest providers and suppliers must realize that if they submit claims for services or items furnished at or from non-compliant locations, they risk not only the revocation of that location but also of their other locations. As an illustration,

assume that a DMEPOS supplier has four separately enrolled locations. The supplier shifts one of its locations without notifying Medicare, and the new site is a false storefront. The supplier furnishes no items from this location, but it submits bills for DME allegedly provided from this site. Under our proposal, CMS could revoke this location as well as the three other sites. Even if the other sites had different numerical identifiers, legal business names or ownership, we could take action against them if there is evidence to suggest that they are effectively under the control of similar parties. This is to ensure that suppliers do not attempt to circumvent § 424.535(a)(20) by opening locations under different identities or with different ''front men'' (such as family members).

We would consider the following factors when determining whether and how many of the provider's or supplier's other locations should be revoked:

- The reason(s) for and facts behind the location's non-compliance (for example, false storefront; otherwise non-operational; other violation of supplier standards).
- The number of additional locations involved.
- Whether the provider or supplier has any history of final adverse actions (as that term is defined in § 424.502) or Medicare or Medicaid payment suspensions.
- The degree of risk that the location's continuance poses to the Medicare Trust Funds.
- The length of time that the non-compliant location was non-compliant.
- The amount that was billed for services performed at or items furnished from the non-compliant location.
- Any other evidence that we deem relevant to our determination.

We emphasize that our proposal is primarily designed to identify and pursue providers and suppliers that knowingly operate fictitious or otherwise non-compliant locations in order to circumvent CMS policies.

3. Improper Ordering, Certifying, Referring or Prescribing of Part A or B Services, Items or Drugs

In the previously mentioned December 5, 2014 final rule, we finalized § 424.535(a)(8)(ii), which states that we may revoke a provider's or supplier's Medicare billing privileges if the provider or supplier has a pattern or practice of submitting claims that fail to meet Medicare requirements such as, but not limited to, the requirement that the service be reasonable and necessary. This provision is intended to place providers and suppliers on notice that they have a legal obligation to always submit correct and accurate claims; the provider's or supplier's repeated failure to do so poses a risk to the Medicare Trust Funds.

On May 23, 2014 we published a final rule in the **Federal Register** (79 FR 29843) titled ''Medicare Program; Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs.'' Under § 424.535(a)(14), we may revoke a physician's or eligible professional's Medicare billing and prescribing privileges if we determine that he or she has a pattern or practice of prescribing Part D drugs that falls into one of the following categories:

- The pattern or practice is abusive, represents a threat to the health and safety of Medicare beneficiaries or both.
- The pattern or practice of prescribing fails to meet Medicare requirements.

In the January 10, 2014 **Federal Register** proposed rule (79 FR 1917), which resulted in the aforementioned May 23, 2014 final rule, we expressed our view that the concept behind proposed § 424.535(a)(8)(ii) should extend to revoking Medicare enrollment for Part D prescribers who engage in abusive prescribing practices. We explained that if a physician or eligible professional consistently fails to exercise reasonable judgment in his or her prescribing practices, we should be able to remove such individuals from the Medicare program in order to protect beneficiaries' safety and health, as well as the Medicare Trust Funds.

However, neither § 424.535(a)(14) nor § 424.535(a)(8)(ii) address the improper ordering or certifying of Medicare services and items or the prescribing of Part B drugs. We have received numerous reports of physicians and eligible professionals engaging in abusive or otherwise inappropriate ordering. While the particular circumstances of each case have varied, they frequently fall within one or more of the following categories: (1) The ordered service or item was not reasonable, not necessary or both; or (2) the physician or eligible professional misrepresents his or her diagnosis to justify the service or test.

Such behavior increases the risk of improper payment for inappropriate services, items or Part B drugs. It also endangers Medicare beneficiaries by unnecessarily exposing them to potentially harmful services and tests. As with the threats that abusive prescribing and billing pose, we believe that the risks of improper ordering, certifying, referring, and prescribing of Part B drugs must be stemmed in order to protect the Medicare program.

Accordingly, we propose in new § 424.535(a)(21) that CMS may revoke a physician's or eligible professional's Medicare enrollment (as the term ''enrollment'' is defined in § 424.502) if he or she has a pattern or practice of ordering, certifying, referring or prescribing Medicare Part A or B services, items or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries or otherwise fails to meet Medicare requirements. Recognizing that not all patterns and practices involve inappropriate behavior, we would consider the following factors in determining whether a pattern or practice of improper ordering, certifying, referring or prescribing exists:

- Whether the physician's or eligible professional's diagnoses support the orders, certifications, referrals or prescriptions in question.
- Whether there are instances where the necessary evaluation of the patient for whom the service, item or drug was ordered, certified, referred or prescribed could not have occurred (for example, the patient was deceased or out of state at the time of the alleged office visit).
- The number and type(s) of disciplinary actions taken against the physician or eligible professional by the licensing body or medical board for the state or states in which he or she practices, and the reason(s) for the action(s).
- Whether the physician or eligible professional has any history of final adverse actions (as that term is defined in § 424.502).
- The length of time over which the pattern or practice has continued.
- How long the physician or eligible professional has been enrolled in Medicare.
- The number and type(s) of malpractice suits that have been filed against the physician or eligible professional related to ordering, certifying, referring or prescribing that have resulted in a final judgment against the physician or eligible professional or in which the physician or eligible professional has paid a settlement to the plaintiff(s) (to the extent this can be determined).
- Whether any state Medicaid program or any other public or private health insurance program has restricted, suspended, revoked or terminated the physician's or eligible professional's ability to practice medicine, and the reason(s) for any such restriction, suspension, revocation or termination.

• Any other information that we deem relevant to our determination.

We emphasize that we are focused on egregious patterns of ordering, certifying, referring or prescribing that fall well outside standard, acceptable practices.

4. Reenrollment Bar Period

Under § 424.535(c), if a provider, supplier, owner or managing employee has their billing privileges revoked, they are barred from participating in Medicare from the date of the revocation until the end of the reenrollment bar. The reenrollment bar begins 30 days after CMS or its contractor mails notice of the revocation and lasts a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation.

We are proposing the following changes to § 424.535(c).

First, we propose to incorporate the existing version of § 424.535(c) into a new paragraph (1) that would increase the current maximum reenrollment bar from 3 years to 10 years (with the exception of the situations described in new paragraphs (c)(2) and (c)(3), discussed later in this section). We believe it would be reasonable in certain cases to prevent a provider or supplier from participating in Medicare for longer than 3 years. Indeed, certain behavior could prove so harmful to Medicare, its beneficiaries, and/or the Trust Funds that a very lengthy bar from Medicare is warranted. We believe that a 10-year maximum period is appropriate, both to ensure that providers and suppliers that engage in such activities are kept out of Medicare and to deter others from potentially duplicating this behavior. We chose 10 years because there is precedent for this timeframe; under § 424.535(a)(3)(iii), it constitutes the minimum revocation period for providers that have been convicted of multiple felonies. However, we do not expect to impose longer reenrollment bars for certain existing revocation reasons. For instance, revocations that currently involve only a 1-year reenrollment bar would not necessarily result in a longer period under new § 424.535(c)(1).

Second, we propose in new § 424.535 paragraph (c)(2) that CMS may add up to 3 more years to the provider's or supplier's reenrollment bar (even if such period exceeds the maximum period otherwise allowable under paragraph (c)(1)) if CMS determines that the provider or supplier is attempting to circumvent its existing reenrollment bar by enrolling in Medicare under a different name, numerical identifier or business identity. We believe that such efforts to avoid Medicare rules warrant the provider's or supplier's prohibition from Medicare for a longer period than was originally imposed.

The affected provider or supplier could appeal CMS' imposition of additional years to the provider's or supplier's existing reenrollment bar under § 424.535(c)(2). These appeals rights would be governed by 42 CFR part 498. However, they would not extend to the imposition of the original enrollment bar under § 424.535(c)(1); they would be limited to the additional years imposed under § 424.535(c)(2).

Third, we propose in new § 424.535 paragraph (c)(3) that CMS may impose a reenrollment bar of up to 20 years if the provider or supplier is being revoked from Medicare for the second time. Multiple revocations indicate that the provider or supplier cannot be considered a reliable partner of the Medicare program. The reenrollment bar under paragraph (c)(3) would be in lieu of the reenrollment bar described in paragraph (c)(1). We would determine the bar's length by considering the following factors: (1) The reasons for the revocations; (2) the length of time between the revocations; (3) whether the provider or supplier has any history of final adverse actions (other than Medicare revocations) or Medicare or Medicaid payment suspensions; and (4) any other information that CMS deems relevant to its determination. We could apply paragraph (c)(3) even if the two revocations occurred under different names, numerical identifiers or business identities so long as we can determine that the two actions effectively involved the same provider or supplier.

Fourth, we propose in new § 424.535(c)(4) that a reenrollment bar would apply to a provider or supplier under any of its current, former or future business names, numerical identifiers or business identities. This would help ensure that revoked providers and suppliers do not attempt to circumvent a revocation and reenrollment bar by changing their name, identity, business structure, etc.

We recognize that some providers and suppliers may be concerned about our reenrollment bar proposals. Our sole objective is to ensure that unscrupulous providers and suppliers are kept out of Medicare for as long as possible. Longer bars of 10 and 20 years would be reserved for egregious cases of fraudulent, dishonest or abusive behavior.

5. Reapplication Bar

We propose in new § 424.530(f) that CMS may prohibit a prospective provider or supplier from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in Medicare. This ''reapplication'' bar would apply to the individual or organization under any current, former or future name, numerical identifier or business identity.

The purpose of this provision is to keep untrustworthy providers and suppliers from entering the Medicare program and to forestall future efforts to enroll. We believe the submission of false information or the withholding of information relevant to the provider's or supplier's enrollment eligibility represents a significant program integrity risk. For this reason, and to provide consequences for such behavior, we believe that our proposed reapplication bar is warranted.

When determining the reapplication bar's length, we would consider the following factors: (1) The materiality of the information in question; (2) whether there is evidence to suggest that the provider or supplier purposely furnished false or misleading information or deliberately withheld information; (3) whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions; and (4) any other information that we deem relevant to our determination.

6. Referral of Debt to the United States Department of Treasury

The Debt Collection Improvement Act of 1996 requires federal agencies to refer eligible delinquent debt to the United States Department of Treasury-designated Debt Collection Center (DCC) for cross-servicing and offset. CMS must refer all eligible debt over 120 days delinquent for cross-servicing and offset. Prior to sending a debt to the Department of Treasury, CMS attempts to recoup it via the procedures outlined in CMS Publication 100–06, chapter 4. Generally speaking, we refer a debt to the Department of Treasury only if it cannot recover the debt through its existing procedures. However, in all cases, a provider or supplier is given adequate opportunity to repay the debt or make arrangements to do so (for example, via a repayment plan) before the debt is sent to the Department of Treasury.

We believe that referral to the Department of Treasury may indicate the provider's or supplier's unwillingness to repay a debt, which consequently brings into doubt whether

the provider or supplier can be a reliable partner of the Medicare program. Accordingly, we propose in new § 424.535(a)(17) that CMS may revoke a provider's or supplier's Medicare enrollment if the provider or supplier has an existing debt that CMS refers to the Department of Treasury. In determining whether a revocation is appropriate, we would consider the following factors:

- The reason(s) for the failure to fully repay the debt (to the extent this can be determined).
- Whether the provider or supplier has attempted to repay the debt.
- Whether the provider or supplier has responded to our request(s) for payment.
- Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.
- The amount of the debt.
- Any other information that we deem relevant to our determination.

7. Failure To Report

Section 424.535(a)(9) permits CMS to revoke the Medicare enrollment of a physician, non-physician practitioner, physician group or non-physician practitioner group if the provider or supplier fails to comply with § 424.516(d)(1)(ii) or (iii), which require the provider or supplier to report a change in its practice location or final adverse action status within 30 days of the change.

We propose to expand § 424.535(a)(9) in two ways. First, we propose that CMS may apply § 424.535(a)(9) to all of the reporting requirements in § 424.516(d), not merely those in § 424.516(d)(1)(ii) and (iii). Thus, we could revoke the Medicare enrollment of a physician, non-physician practitioner, physician group or non-physician practitioner group if the supplier fails to report either of the following:

- A change of ownership, final adverse action or practice location within 30 days of the change (as required under § 424.516(d)(1)(i), (ii) and (iii), respectively).
- Any other change in enrollment data within 90 days of the change (as required under § 424.516(d)(2)).

Second, we propose that CMS may apply § 424.535(a)(9) to the reporting requirements in § 410.33(g)(2) (pertaining to IDTFs), § 424.57(c)(2) (pertaining to DMEPOS suppliers), and § 424.516(e) (pertaining to all other provider and supplier types). Consequently, we could revoke a provider or supplier under § 424.535(a)(9) if any of the following occur:

- An IDTF fails to report a change in ownership, location, general supervision or final adverse action within 30 days of the change or fails to report any other change in its enrollment data within 90 days of the change.
- A DMEPOS supplier fails to submit any change in its enrollment information within 30 days of the change.
- A provider or supplier other than a physician, non-physician practitioner, physician group, non-physician practitioner group, IDTF or DMEPOS supplier fails to report any of the following:

++ A change in ownership or control within 30 days of the change.

++ A revocation or suspension of a federal or state license or certification within 30 days of the revocation or suspension.

++ Any other change in its enrollment data within 90 days of the change.

We do not believe our revocation authority under § 424.535(a)(9) should be restricted to certain provider and supplier types that have omitted reporting a change in practice location or final adverse action. Any failure to report changed enrollment data, regardless of the provider or supplier type involved, is of concern to us. We must have complete and accurate data on each provider and supplier to help confirm that the provider or supplier still meets all Medicare requirements and that Medicare payments are made correctly. Inaccurate or outdated information puts the Medicare Trust Funds at risk.

While we would retain the discretion to revoke a provider's or supplier's enrollment for any failure to meet the reporting requirements in § 424.516(d) or (e), § 410.33(g)(2) or § 424.57(c)(2), our proposal is focused on egregious cases of non-reporting. For instance, a provider's belated omission to report a ZIP code change until 120 days after the change does not represent the level of program integrity risk of a complete failure to report a new practice location. We would consider the following factors in determining whether a § 424.535(a)(9) revocation is appropriate: (1) Whether the data in question was reported; (2) if the data was reported, how belatedly; (3) the materiality of the data in question; and (4) any other information that we deem relevant to our determination.

8. Payment Suspensions

Section 424.530(a)(7) permits the denial of a provider's or supplier's Medicare enrollment application if the current owner, physician or non-physician practitioner has been placed under a Medicare payment suspension in accordance with §§ 405.370 through 405.372. Under § 405.371, a Medicare payment suspension may be imposed if CMS determines that a credible allegation of fraud against a provider or supplier exists. The general purpose of a payment suspension is to temporarily halt the payment of Trust Fund dollars to a provider or supplier pending the resolution of a particular matter, such as an investigation as to whether the provider or supplier has engaged in fraudulent activity.

We propose several revisions to § 424.530(a)(7) and one revision to § 405.371.

First, we propose to expand § 424.530(a)(7)'s applicability to all provider and supplier types and to any owning or managing employee or organization of the provider or supplier. We believe the existing scope of § 424.530(a)(7), which is limited to owners, physicians, and non-physician practitioners, does not address the continuum of program vulnerabilities in this area; providers and suppliers other than physicians and non-physician practitioners are currently not prohibited from enrolling in Medicare based on a payment suspension. Furthermore, a managing individual or entity often has as much (or more) day-to-day control over a provider or supplier as an owner. In our view, permitting a provider or supplier to enroll in Medicare even though one of its managing officials or organizations is under a payment suspension poses a risk to Medicare and its beneficiaries.

Second, we propose to include Medicaid payment suspensions within the scope of § 424.530(a)(7). Under § 455.23, the state Medicaid agency must suspend all Medicaid payments to a provider or supplier after the agency determines there is a credible allegation of fraud for which a Medicaid investigation is pending (unless the agency has good cause to not suspend payments). We see no significant difference between Medicare and Medicaid payment suspensions in terms of the threat posed to federal health care program integrity; indeed, potentially fraudulent behavior in the Medicaid program could be repeated in the Medicare program. As such, we must be able to prevent such providers and suppliers from entering Medicare.

Third, we propose to incorporate these revised provisions into a new § 424.530(a)(7)(i).

Fourth, we propose to establish a new § 424.530(a)(7)(ii) that would permit

CMS to apply § 424.530(a)(7) to the following:

- Any of the provider's or supplier's or owning or managing employee's or organization's current or former names, numerical identifiers or business identities.
- Any of the provider's or supplier's existing enrollments.

This reflects our desire to ensure that questionable parties are unable to reenter the Medicare program (be it as a provider, supplier, owner or manager) by using alternate identifiers. We are also concerned about situations where the provider or supplier has multiple enrollments, including those under different business structures, tax identification numbers, etc.

We would consider the following factors in determining whether a denial is appropriate:

- The specific behavior in question.
- Whether the provider or supplier is the subject of other similar investigations.
- Any other information that we deem relevant to our determination.

Fifth, we propose to expand § 405.371 to state that a Medicare payment suspension may be imposed if a state Medicaid program suspends payment pursuant to § 455.23(a)(1). Again, we are concerned that possible fraudulent behavior in the Medicaid program might be repeated in the Medicare program.

9. Other Federal Program Termination

To further protect Medicare from inappropriate activities occurring in other programs, we propose two changes regarding denials and revocations.

(a) Denials

We propose in new § 424.530(a)(14) that CMS may deny a provider's or supplier's Medicare enrollment application if the provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a particular state Medicaid program or any other federal health care program, or the provider's or supplier's license is currently revoked or suspended in a state other than that in which the provider or supplier is enrolling. We note that under § 455.416(c), a Medicaid state agency must deny a provider's or supplier's enrollment application if the provider or supplier is presently revoked from Medicare; § 424.530(a)(14) would help ensure consistency with the framework of § 455.416(c). As mentioned previously, we are concerned that a provider's or supplier's improper behavior in another federal health care program may be duplicated in Medicare. Similarly, we believe that a Medicare provider's or supplier's actions that led to a licensure revocation or suspension in one state could be repeated with respect to its prospective enrollment in another state.

We believe that the presence of a relevant suspension warrants additional scrutiny for providers or suppliers attempting to enroll in Medicare, for the conduct underlying the suspension could raise questions as to the prospective provider's or supplier's ability to be a dependable Medicare participant. We recognize that licensure and federal program suspensions are generally temporary rather than permanent actions. However, under certain conditions, license suspensions may be imposed for extended periods and involve serious transgressions. We believe that under conditions indicating significant risks to program integrity, we should consider such conduct and determine the risk it poses before allowing the provider or supplier to enroll.

We note that § 424.530(a)(14) could apply regardless of whether any appeals are pending. Under current § 424.535(a)(12)(ii), we may not revoke a provider's or supplier's Medicare enrollment based on a Medicaid termination unless the provider or supplier has exhausted all applicable appeal rights regarding the Medicaid termination. We do not believe a similar clause should apply to § 424.530(a)(14). Akin to what we stated in the previous paragraph, we believe it would be inappropriate to permit a Medicaid-terminated provider or supplier (or a provider or supplier terminated under any federal program) into Medicare simply because the provider or supplier has not yet exhausted its appeal rights. Indeed, such a clause might encourage the provider or supplier to file a frivolous appeal in order to enroll in Medicare prior to the exhaustion of its appeal rights.

In determining whether to invoke § 424.530(a)(14) in a particular case, we would consider the following factors:

- The reason(s) for the termination, revocation or suspension.
- Whether, as applicable, the provider or supplier is currently terminated or suspended (or otherwise barred) from more than one program (for example, more than one state's Medicaid program), has been subject to any other sanctions during its participation in other programs or by any other state licensing boards or has had any other final adverse actions imposed against it.
- Any other information that we deem relevant to our determination.

Consistent with our discussion throughout this proposed rule, we further propose that § 424.530(a)(14) would apply to the provider or supplier under any of its current or former names, numerical identifiers or business identities.

(b) Revocations

Under § 424.535(a)(12), Medicare may revoke a provider's or supplier's enrollment if a state Medicaid agency terminates the provider's or supplier's Medicaid enrollment. Similar to our discussion concerning § 424.530(a)(14), we propose to expand § 424.535(a)(12)(i) such that CMS may revoke a provider's or supplier's Medicare enrollment if the provider or supplier is terminated or revoked (or otherwise barred) from participation in any other federal health care program. In determining whether a revocation is appropriate, CMS would consider the following factors:

- The reason(s) for the termination or revocation.
- Whether the provider or supplier is currently terminated, revoked or otherwise barred from more than one program (for example, more than one state's Medicaid program) or has been subject to any other sanctions during its participation in other programs.
- Any other information that we deem relevant to our determination.

Section 424.535(a)(12)(ii) states that Medicare may not terminate a provider's or supplier's enrollment unless and until a provider or supplier has exhausted all applicable appeal rights. We are not proposing to modify this provision. We would not revoke a provider's or supplier's enrollment under paragraph (a)(12)(i) unless all applicable appeal rights have been exhausted.

Also, for reasons previously explained, we propose to add new § 424.535(a)(12)(iii) under which we may apply § 424.535(a)(12)(i) to the provider or supplier under any of its current or former names, numerical identifiers or business identities.

10. Extension of Revocation

We propose in new § 424.535(i) that CMS may revoke any and all of a provider's or supplier's Medicare enrollments—including those under different names, numerical identifiers or business identities and those under different types (for example, an entity is enrolled as a group practice via the Form CMS–855B and as a DMEPOS supplier via the Form CMS–855S (OMB Control No. 0938–1056))—if the provider or supplier is revoked under § 424.535(a).

This provision is designed to ensure that individuals and entities that are revoked for inappropriate behavior are not permitted to remain enrolled in Medicare in any capacity. Consider the following examples:

- A physician's State X enrollment is revoked because his license in X was revoked. Under § 424.535(i), we also could revoke the physician's state Y enrollment even if he is still licensed in Y.
- An entity has two enrollments: One via the Form CMS–855A as a certified supplier, another via the Form CMS–855B as a group practice. The entity's Form CMS–855A enrollment is revoked under § 424.535(a)(4). Under § 424.535(i), CMS could also revoke the organization's Form CMS–855B enrollment, even if that enrollment is in another state.
- A non-physician practitioner is enrolled via the Form CMS–855I (OMB Control No. 0938–0685)) as an individual supplier and as a DMEPOS supplier via the Form CMS–855S. The individual's Form CMS–855I enrollment is revoked for abusive billing practices. Under § 424.535(i), CMS could also revoke her Form CMS–855S enrollment.

In determining whether to revoke a provider's or supplier's other enrollments under § 424.535(i), we would consider the following factors:

- The reason for the revocation and the facts of the case.
- Whether any final adverse actions have been imposed against the provider or supplier regarding its other enrollments (for example, licensure suspensions imposed by the state, prior revocations, payment suspensions).
- The number and type(s) of other enrollments (for instance, Form CMS–855B).
- Any other information that we deem relevant to our determination.

This provision would be applied in highly exceptional cases where the provider's or supplier's conduct was particularly egregious or the maintenance of the provider's or supplier's other enrollments would jeopardize the Medicare Trust Funds. Moreover, § 424.535(i) would not be an ''all or nothing'' provision, meaning that we would not be required to revoke all of the provider's or supplier's enrollments if we chose to invoke § 424.535(i). We would apply the previously listed factors to each enrollment in determining whether it should be revoked.

11. Voluntary Termination Pending Revocation

As mentioned in section II.A. of this proposed rule, we have seen instances of providers and suppliers failing to meet Medicare requirements or otherwise engaging in improper behavior, and then voluntarily terminating their Medicare enrollment in order to avoid a potential revocation of their enrollment and a consequent reenrollment bar. For instance, assume that we perform a site visit of a provider's lone location. The location does not comply with our requirements. Knowing that its Medicare enrollment may soon be revoked, the provider submits a Form CMS–855 to voluntarily terminate its enrollment; the purpose, again, is to depart Medicare to avoid a formal revocation and reenrollment bar and any other consequences stemming therefrom.

We believe that such attempts to circumvent the revocation process represent a risk to the Medicare program. Not only do these actions reflect dishonesty on the provider's or supplier's part, but also that the provider or supplier may be deliberately taking advantage of program vulnerabilities because no reenrollment bar has been imposed. To this end, we propose in new § 424.535(j)(1) that we may revoke a provider's or supplier's Medicare enrollment if we determine that the provider or supplier voluntarily terminated its Medicare enrollment in order to avoid a revocation under § 424.535(a) that CMS would have imposed had the provider or supplier remained enrolled in Medicare. In making our determination, we would consider all of the following:

- If there is evidence to suggest that the provider knew or should have known that it was or would be out of compliance with Medicare requirements.
- If there is evidence to suggest that the provider knew or should have known that its Medicare enrollment would be revoked.
- If there is evidence to suggest that the provider voluntarily terminated its Medicare enrollment in order to circumvent such revocation.
- Any other evidence or information that CMS deems relevant to its determination.

In new paragraph (j)(2), we propose that a revocation under § 424.535(j)(1) would be effective the day before the Medicare contractor receives the provider's or supplier's Form CMS–855 voluntary termination application. This date is appropriate because the provider's or supplier's submission of the voluntary termination application is the basis for a revocation under paragraph (j)(1); procedurally, the voluntary termination would be reversed (if the Medicare contractor processed the application to completion) and then the provider's or supplier's enrollment would be revoked.

12. Enrollment for Ordering/Certifying/Referring/Prescribing of All Part A and B Services, Items, and Drugs; Maintenance of Documentation.

a. Enrollment

We stated earlier that section 6405(c) of the Affordable Care Act gives the Secretary the authority to extend the requirements of section 6405(a) and (b) of the Affordable Care Act to all other categories of items or services under title XVIII of the Act (including covered Part D drugs) that are ordered, prescribed or referred by a physician or eligible professional enrolled under section 1866(j) of the Act. Under this authority, § 424.507(a) and (b) collectively state that to receive payment for ordered imaging services, clinical laboratory services, DMEPOS items or home health services, the service or item must have been ordered or certified by a physician or, when permitted, an eligible professional who—(1) is enrolled in Medicare in an approved status; or (2) has a valid opt-out affidavit on file with an A/B MAC.

Sections 424.507(a) and (b) were implemented via an April 27, 2012 final rule titled: ''Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements'' (77 FR 25284). Also, in the previously mentioned May 23, 2014 final rule (79 FR 29843), we finalized provisions under which the prescriptions of a physician or eligible professional who is not enrolled in Medicare and does not have a valid opt-out affidavit on file with an A/B MAC would not be covered under the Part D program.

The purpose of the provider enrollment process is to ensure that providers and suppliers that furnish services and items to Medicare beneficiaries meet all Medicare requirements. Section 424.507(a) and (b) were designed to help us confirm that individuals who order or certify certain types of Medicare services and items were qualified to do so. Indeed, without the enrollment process, we cannot determine whether these persons meet all Medicare requirements. There could be situations where an unqualified individual is ordering numerous Medicare services other than those currently listed in § 424.507 (such as tests) that are potentially dangerous to beneficiaries. Moreover, unnecessary services and items could result in

wasted Medicare expenditures. In short, we must be able to screen all physicians and eligible professionals to ensure that Medicare requirements are met, and that Medicare beneficiaries and the Trust Funds are protected.

We believe that the importance of confirming that all physicians and eligible professionals who order, certify, refer or prescribe Part A or B services, items or drugs (and not simply those services and items described in § 424.507) are qualified to do so dictates that we expand the purview of § 424.507. To this end, we propose the following changes to § 424.507(a) and (b):

The heading to paragraph (a) currently reads: ''Conditions for payment of claims for ordered covered imaging and clinical laboratory services and items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).'' We propose to change this to state: ''Conditions for payment of claims for ordered, certified, referred or prescribed covered Part A or B services, items or drugs.''

The heading to existing paragraph (a)(1) reads: ''Ordered covered imaging, clinical laboratory services, and DMEPOS item claims.'' We propose to change this to state: ''Ordered, certified, referred or prescribed covered Part A or B services, items or drugs.''

The opening sentence in paragraph (a)(1) currently states in part: ''To receive payment for ordered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in § 424.507(b), and Part B drugs)''. We propose to change this language to read: ''To receive payment for ordered, certified, referred or prescribed covered Part A or B services, items or drugs''.

Paragraph (a)(1)(i) states in part: ''The ordered covered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in paragraph (b) of this section, and Part B drugs) must have been ordered by''. We propose to change this language to: ''The ordered, certified, referred or prescribed covered Part A or B service, item or drug must have been ordered, certified, referred or prescribed by''.

In paragraph (a)(2), we propose to change the heading from ''Part B beneficiary claims'' to ''Part A and B beneficiary claims.'' We also propose to change the language that states ''To receive payment for ordered covered items and services listed at § 424.507(a)'' to ''To receive payment for ordered, certified, referred or prescribed covered Part A or B services, items or drugs''.

In paragraphs (a)(1)(ii), (a)(1)(iii), and (a)(2)(i), we propose to change the language that reads ''who ordered the item or service'' to ''who ordered, certified, referred or prescribed the Part A or B service, item or drug''.

We propose to change the existing language in paragraphs (a)(1)(iv) and (a)(2)(ii) that reads ''If the item or service is ordered by'' to ''If the Part A or B service, item or drug is ordered, certified, referred or prescribed by''.

We propose to revise the existing language in paragraphs (a)(1)(iv)(A)(*1*) and (a)(2)(ii)(A)(*1*) from ''As the ordering supplier'' to ''As the ordering, certifying, referring or prescribing supplier''.

We propose to change the current language in paragraphs (a)(1)(iv)(B) and (a)(2)(ii)(B) that reads ''order such items and services'' to ''order, certify, refer or prescribe such services, items, and drugs''.

In paragraphs (a)(1)(iv)(B)(*1*) and (a)(2)(ii)(B)(*1*), we propose to replace the word ''order'' with ''order, certify, refer or prescribe''.

We propose to delete the existing version of paragraph (b), which deals with home health services. Such services would be addressed in revised paragraph (a). We propose to redesignate current paragraph (c) as revised paragraph (b). We also propose in this paragraph to—

- Change the language that reads ''covered items and services'' to ''ordered, certified, referred or prescribed Part A or B services, items or drugs;''
- Delete ''or (b)'' and ''and (b)'', since the existing version of paragraph (b) would be replaced;
- Change ''paragraphs (a)(1)'' to ''paragraph (a)(1)''; and
- Delete ''respectively.''

We propose to redesignate current paragraph (d) as revised paragraph (c). We also propose in this paragraph to do the following:

- Change the language that reads ''covered items or services'' to ''ordered, certified, referred or prescribed covered Part A or B services, items or drugs''.
- Change the language that states ''paragraphs (a) and (b)'' to ''paragraph (a).''Delete paragraph (d).

Our proposal would include drugs that are covered under Part B. This, combined with § 423.120(c), would help confirm that all prescribers of Medicare drugs are thoroughly vetted for compliance with Medicare requirements.

We further propose that our changes to § 424.507 would become effective on January 1, 2018, in order to give sufficient time for—(1) providers and suppliers to complete the enrollment or opt-out process; (2) stakeholders (including CMS and its contractors) to prepare for, operationalize, and implement these requirements; and (3) provider and beneficiary education. The current version of § 424.507 would remain in effect through December 31, 2017.

In the April 27, 2012 final rule (77 FR 25291), we agreed with commenters that there were a number of operational issues associated with a requirement that services of a specialist be ordered or referred, and we removed that requirement. However, with the successful implementation of the current version of § 424.507, we believe that the expansion of § 424.507 to include other services can be fully operationalized.

b. Maintenance of Documentation

In the November 19, 2008 **Federal Register**, we published a final rule with comment period titled, ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies'' (73 FR 69726). In that rule, we established § 424.516(f) stating that—(1) a provider or supplier is required to maintain ordering and referring documentation, including the NPI, received from a physician or eligible non-physician practitioner for 7 years from the date of service; and (2) physicians and non-physician practitioners are required to maintain written ordering and referring documentation for 7 years from the date of service.

Section 6406(b)(3) of the Affordable Care Act amended section 1866(a)(1) of the Act to require that providers and suppliers maintain and, upon request, provide to the Secretary, access to written or electronic documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services or referrals for other items or services written or ordered by the provider as specified by the Secretary. Under section 6406(a) of the Affordable Care Act, which amended section 1842(h) of the Act, the Secretary may revoke a physician's or supplier's enrollment if the physician or supplier fails to maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services or referrals for

other items or services written or ordered by such physician or supplier, as specified by the Secretary.

Consistent with the authority given to the Secretary in sections 6406(a) and (b)(3) of the Affordable Care Act, we revised § 424.516(f) in the previously referenced April 27, 2012 final rule to state as follows:

- Under paragraph (f)(1), a provider or supplier that furnishes covered ordered items of DMEPOS, clinical laboratory, imaging services or covered ordered/certified home health services is required to maintain documentation for 7 years from the date of service, and provide access to that documentation upon the request of CMS or a Medicare contractor.
- Under paragraph (f)(2), a physician who orders/certifies home health services and the physician or, when permitted, other eligible professional who orders items of DMEPOS or clinical laboratory or imaging services is required to maintain documentation for 7 years from the date of service, and provide access to that documentation upon the request of CMS or a Medicare contractor.

The documentation in paragraphs (f)(1) and (2) includes written and electronic documents (including the NPI of the physician who ordered/certified the home health services and the NPI of the physician or, when permitted, other eligible professional who ordered items of DMEPOS or clinical laboratory or imaging services) relating to written orders and certifications and requests for payments for items of DMEPOS and clinical laboratory, imaging, and home health services.

We propose to expand these requirements in § 424.516(f) to include all Part A and Part B services, items, and drugs that are ordered, certified, referred or prescribed by a physician or, when permitted, eligible professional. Thus, the provider or supplier furnishing the Part A or B service, item or drug, as well as the physician or, when permitted, eligible professional who ordered, certified, referred or prescribed the service, item or drug, would have to maintain documentation for 7 years from the date of the service and furnish access to that documentation upon a CMS or Medicare contractor request. The documentation would include written and electronic documents (including the NPI of the ordering/certifying/referring/prescribing physician or, when permitted, eligible professional) relating to written orders, certifications, referrals, prescriptions, and requests for payments for a Part A or B service, item or drug.

We believe it is important that our expansion of § 424.516(f) include all Part A and B services, items, and drugs be consistent with our proposed revisions to § 424.507. Both provisions are intended to help make certain that payments for Part A and B services, items, and drugs are made correctly. To require all persons who order, certify, refer, and prescribe Part A and B services, items or drugs to enroll in Medicare without requiring them (or the billing provider) to retain supporting documentation would undercut the effectiveness of § 424.507. Without being able to review this documentation, we may lack the ability to confirm that the order, certification, referral or prescription was proper and that the ordering, certifying, referring or prescribing individual was qualified.

13. Opt-Out Physicians and Practitioners

As previously mentioned, no Medicare payment (either directly or indirectly) will be made for services furnished by opt-out physicians or practitioners, except as permitted in accordance with § 405.435(c) and § 405.440. The effects of opting-out are described in § 405.425. Section 405.425(i) states that an opt-out physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of the Act may order, certify the need for or refer a beneficiary for Medicare-covered items and services, provided he or she is not paid directly or indirectly for such services (except as provided in § 405.440). Under § 405.425(j), an excluded physician or practitioner may not order, prescribe or certify the need for Medicare-covered items and services except as provided in 42 CFR 1001.1901, and must otherwise comply with the terms of the exclusion in accordance with 42 CFR 1001.1901.

We propose to revise § 405.425(i) and (j) by including opt-out physicians and practitioners who are revoked under § 424.535. Thus, a revoked opt-out physician or practitioner would be unable to order, prescribe, and certify the need for or refer a beneficiary for Medicare-covered services and items except as otherwise provided in those paragraphs.

We are concerned that revoked physicians and practitioners who have opted-out could, through inappropriate ordering and certifying practices, pose a risk to Medicare beneficiaries. Our concern is heightened because opt-out physicians and practitioners are not subject to the same stringent enrollment and verification processes that enrolled physicians and practitioners are. Therefore, we believe that these proposed changes are necessary.

14. Moratoria

Under § 424.570(a), CMS may impose a temporary moratorium on the enrollment of new Medicare providers and suppliers of a particular type or the establishment of new practice locations of a particular type in a particular geographic area. Per § 424.570(a)(2)(i), a moratorium is imposed when CMS determines that there is a significant potential for fraud, waste or abuse with respect to a particular provider or supplier type or a particular geographic area or both. Consistent with this authority, we have published several **Federal Register** documents announcing the imposition of a temporary moratorium on the enrollment of HHAs and ambulance suppliers. (See, for example, the July 31, 2013 (78 FR 46339) and February 4, 2014 (79 FR 6475) **Federal Register**.)

We are proposing several changes to § 424.570(a).

a. Change in Practice Location

Section 424.570(a)(1)(iii) states that a temporary moratorium does not apply to changes in practice locations, changes in provider or supplier information (such as phone numbers) or changes in ownership (except changes in ownership of HHAs that would require an initial enrollment under § 424.550)).

We are proposing three revisions to § 424.570(a)(1)(iii).

The first proposal would divide the current version of § 424.570(a)(1)(iii) into paragraphs (A), (B), and (C) so that each requirement mentioned in paragraph (iii) could be addressed individually.

Secondly, we would clarify in paragraph (a)(1)(iii)(A), which would address practice locations, that a temporary moratorium applies to situations in which a provider or supplier is changing a practice location from a location outside the moratorium area to a location inside the moratorium area. We see no difference between this situation and one in which a provider or supplier is opening a brand new practice location in the moratorium area. In both cases, an additional site is being established in the moratorium area, something the moratorium is designed to prevent. Therefore, we believe this change is necessary.

Lastly, we would clarify the existing policy in paragraph (a)(1)(iii)(C) by removing the language ''under § 424.550''. Under § 489.18(c), if an HHA changes ownership as specified in § 489.18(a), the existing provider agreement is automatically assigned to

the new owner. However, if the new owner declines to accept the assets and liabilities of the HHA and refuses assignment of the provider agreement, § 489.18(c) does not apply and the HHA must enroll as a new provider, that is, via an initial enrollment. The existing reference to § 424.550 in paragraph (a)(1)(iii) may have caused some confusion on this point. Accordingly, we are proposing to remove this reference in order to clarify current policy.

b. Application of Moratorium

Section 424.570(a)(1)(iv) currently states that a temporary enrollment moratorium does not apply to any enrollment application that has been approved by the enrollment contractor but not yet entered into PECOS at the time the moratorium is imposed. We propose to revise this paragraph to state that a temporary moratorium does not apply to any enrollment application that has been received by the Medicare contractor prior to the date the moratorium is imposed.

In the moratoria that have been imposed, some providers and suppliers have spent many thousands of dollars preparing for enrollment only to have their Form CMS–855 applications denied near the end of the enrollment process because of the sudden imposition of a moratorium. This has been especially problematic for HHAs—(1) whose Form CMS–855A applications have been recommended for approval by the contractor; (2) that have successfully completed a state survey; and (3) whose applications and survey results have been forwarded by the state to the CMS regional office for final review. This entire process can take a substantial amount of time, and the considerable resources the provider or supplier may have expended by this point are effectively lost when CMS imposes a moratorium.

We believe this has been an unintended consequence of the moratoria. In our view, the overall objective of the moratoria—the need to reduce the potential for fraud, waste or abuse in certain geographic areas—can be equally satisfied by applying a moratorium to applications submitted after the moratorium is imposed. Thus, we believe that our proposed ''prior to the moratorium date'' threshold is appropriate.

We also propose in § 424.570(a)(1)(iv) to change the term ''enrollment contractor'' to ''Medicare contractor.'' We believe the latter term is more consistent with CMS' use of Medicare Administrative Contractors.

15. Surety Bonds

Since 2009, certain DMEPOS suppliers have been required under § 424.57(d) to obtain, submit, and maintain a surety bond in an amount of at least $50,000 as a condition of enrollment. Paragraph (d)(5)(i) states that the surety bond must guarantee that the surety will, within 30 days of receiving written notice from CMS containing sufficient evidence to establish the surety's liability under the bond of unpaid claims, CMPs or assessments, pay CMS a total of up to the full penal amount of the bond in the following amounts: (1) The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible; and (2) the amount of any unpaid claims, CMPs or assessments imposed by CMS or the OIG on the DMEPOS supplier, plus accrued interest. Further, paragraph (d)(5)(ii) states that the surety bond must provide that the surety is liable for unpaid claims, CMPs or assessments that occur during the term of the bond.

We have specific procedures for collecting monies from sureties in accordance with § 424.57(d)(5) and have recouped several million dollars via these procedures. However, we have encountered instances where the surety has failed to submit payment to CMS, notwithstanding its obligation to do so under both § 424.57(d)(5) and the surety bond's terms. We do not believe we should permit a DMEPOS supplier to use that particular surety when the latter has not fulfilled its legal responsibilities to us as the obligee under the surety bond. We thus propose in new § 424.57(d)(16) that CMS may reject an enrolling or enrolled DMEPOS supplier's new or existing surety bond if the surety that issued the bond has failed to make a required payment to CMS in accordance with § 424.57(d). This means that we could reject any and all surety bonds furnished by the surety to enrolling or enrolled DMEPOS suppliers under § 424.57(d), not just the surety bond(s) on which the surety refused to make payment. If we reject a surety bond under proposed § 424.57(d)(16), the enrolling or enrolled DMEPOS supplier would have to obtain a bond from a new surety in order to enroll in or maintain its enrollment in Medicare.

To illustrate how § 424.57(d)(16) would operate, suppose a surety has issued surety bonds for DMEPOS suppliers W, X, Y, and Z, all of which are enrolled in Medicare. CMS sought to collect from the surety on the bond issued for Supplier X, but the surety failed to make payment. We would have the discretion to—(1) reject the bonds for W, X, Y, and Z, thus requiring the suppliers to obtain new bonds from a different surety; and (2) refuse to accept future bonds issued to DMEPOS suppliers by the non-compliant surety. In making a determination under items (1) and (2) in the previous sentence, CMS would consider the following several factors:

- The total number of Medicare-enrolled DMEPOS suppliers to which the surety has issued surety bonds.
- The total number of instances in which the surety has failed to make payment to CMS.
- The reason(s) for the surety's failure(s) to pay.
- The percentage of instances in which the surety has failed to pay.
- The total amount of money that the surety has failed to pay.
- Any other information that CMS deems relevant to its determination.

Although CMS would reserve the right to reject all of a surety's existing bonds with Medicare-enrolled DMEPOS suppliers if the surety failed to make even one required payment, CMS would take into account the circumstances surrounding the surety and its failure to make payment per the aforementioned factors.

16. Reactivation

Under § 424.540(a), a provider's or supplier's Medicare billing privileges may be deactivated if the provider or supplier fails to—(1) submit any Medicare claims for 12 consecutive calendar months; (2) report a change to its Medicare enrollment information within 90 calendar days (or, for changes in ownership or control, within 30 days); or (3) furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or to resubmit and certify the accuracy of its enrollment information. To reactivate its billing privileges, the provider or supplier must follow the requirements of § 424.540(b). Specifically—

- Section 424.540 paragraph (b)(1) states that if the provider or supplier is deactivated for any reason other than non-submission of a claim, the provider or supplier must submit a new enrollment application or, when deemed appropriate, recertify that the enrollment information currently on file with Medicare is correct; and
- Paragraph (b)(2) states that if the provider or supplier is deactivated for non-submission of a claim, it must recertify that the enrollment information currently on file with Medicare is

correct and furnish any missing information as appropriate.

We propose to revise subsection (b) in two ways. Paragraph (1) would state that in order for a deactivated provider or supplier to reactivate its Medicare billing privileges, it must recertify that its enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate. Paragraph (2) would state that notwithstanding paragraph (1), CMS may for any reason require a deactivated provider or supplier to submit a complete Form CMS–855 application as a prerequisite for reactivating its billing privileges:

There are several reasons for these proposed changes. First, the existing language in § 424.540(b)(1) has been a source of confusion to providers and suppliers because it does not articulate what the phrase ''when deemed appropriate'' means; there also is some repetition between paragraphs (b)(1) and (b)(2), for both indicate that a recertification is acceptable. Our proposed version of paragraph (b)(1), which combines parts of existing paragraphs (b)(1) and (b)(2), would clarify that a provider or supplier may use recertification—regardless of the deactivation reason—as a means of reactivation.

Second, we believe CMS should have the discretion to require at any time the submission of a complete Form CMS–855 reactivation application irrespective of the deactivation reason. The Form CMS–855 captures information about the provider or supplier that, in the case of a reactivation, would help us determine whether the provider or supplier is still in compliance with Medicare enrollment requirements. A recertification, meanwhile, generally only consists of a statement from the provider or supplier that the information on file is correct and, if necessary, the submission of Form CMS–855 pages containing updated information. Therefore, the Form CMS–855 collects more information than the recertification submission, and there may be situations where CMS determines that a complete application must be submitted. These could include, but are not limited to, the following:

- The provider or supplier was deactivated for failing to submit a claim for 12 consecutive months and has been deactivated for at least 6 months.
- The provider or supplier does not have access to Internet-based PECOS.
- The provider or supplier was deactivated for failing to report a change of information.

In these circumstances, respectively, the provider or supplier—(1) has not submitted a claim for at least 18 months; (2) cannot view its existing enrollment data and thus may be unable to determine the accuracy of this information; and (3) previously failed to comply with Medicare requirements by not timely reporting changed enrollment data. Such instances, in our view, raise questions as to the validity of the provider's or supplier's current enrollment information and possibly its compliance with existing Medicare requirements, thus warranting a complete Form CMS–855 if we deem it necessary. We stress that we could request a complete application in any reactivation situation, not simply those outlined in this proposed section. However, we solicit comments on whether we should restrict the reasons for which CMS may request a complete reactivation application and, if so, what those reasons should be.

While we propose to revise § 424.540(b)(1) and (2) as previously described, we are not proposing any changes to § 424.540(b)(3).

17. Changes to Definition of Enrollment

We propose several additional changes to 42 CFR part 424 to address the general concept of enrollment as it pertains to the Form CMS–855O (OMB Control No. 0938–1135), which is used by physicians and eligible professionals seeking to enroll in Medicare solely to order and certify certain items or services and/or prescribe Part D drugs.

a. Definition of ''Enroll/Enrollment'' (§ 424.502)

We propose several revisions of the existing definition of ''Enroll/Enrollment'' in § 424.502.

First, the opening sentence of the definition currently states: ''Enroll/Enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order or certify Medicare-covered items and services.'' We propose to change this to read: ''Enroll/Enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs.'' There are two reasons for this change. One is to align this definition with the language in our proposed revisions to § 424.507(a) and (b). (See section II.A.12. of this proposed rule.) The second is to address in this definition the enrollment provisions in § 423.120(c)(6) relating to Part D drugs. In both cases, we are clarifying that the enrollment process includes a physician's or eligible professional's completion of the Form CMS–855O in order to meet the requirements of §§ 424.507(a) and (b) and 423.120(c)(6).

Second, the current version of paragraph (2) of the definition of ''Enroll/Enrollment'' states: ''Except for those suppliers that complete the Form CMS–855O form, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare-covered items and services, validating the provider or supplier's eligibility to provide items or services to Medicare beneficiaries.'' We propose to change this to read: ''Except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, validating the provider's or supplier's eligibility to provide items or services to Medicare beneficiaries.'' This revision is to clarify that a supplier's completion of the Form CMS–855O solely to obtain eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, does not convey Medicare billing privileges to the supplier.

Third, and for reasons similar to those involving our proposed change to paragraph (2) of the definition of ''Enroll/Enrollment,'' we propose to revise paragraph (4) thereof. The new version of paragraph (4) would read: ''Except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, granting the Medicare provider or supplier Medicare billing privileges.''

b. Revision to § 424.505

We also propose to replace the language in § 424.505 that states ''to order or certify Medicare-covered items and services'' with ''to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs.'' This is to clarify that completion of the Form CMS–855O does not convey Medicare billing privileges to the supplier.

c. Revision to § 424.510(a)(3)

Section 424.510(a)(3) currently reads: ''To be enrolled solely to order and certify Medicare items or services, a physician or non-physician practitioner must meet the requirements specified in paragraph (d) of this section except for paragraphs (d)(2)(iii)(B), (d)(2)(iv), (d)(3)(ii), and (d)(5), (6), and (9) of this section.'' We propose to revise this to state: ''To be enrolled solely to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs or to prescribe Part D drugs, a physician or non-physician practitioner must meet the requirements specified in paragraph (d) of this section except for paragraphs (d)(2)(iii)(B), (d)(2)(iv), (d)(3)(ii), and (d)(5), (6), and (9) of this section.'' This change is intended to include within the purview of § 424.510(a)(3) those suppliers who are enrolling via the Form CMS–855O pursuant to § 423.120(c)(6) or pursuant to our proposed revisions to § 424.507(a) and (b).

d. Revision to § 424.535(a)

We also propose to change the term ''billing privileges'' in the opening paragraph of § 424.535(a) to ''enrollment.'' The paragraph would thus read: ''CMS may revoke a currently enrolled provider's or supplier's Medicare enrollment and any corresponding provider agreement or supplier agreement for the following reasons''. This is to clarify that the revocation reasons in § 424.535(a) apply to all enrolled parties, including suppliers who are enrolled solely to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs; the reasons are not limited to providers and suppliers that have Medicare billing privileges. Thus, for instance, a Part D prescriber's Medicare enrollment may be revoked if one of the revocation reasons in § 424.535(a) applies.

We note also that the opening paragraph of § 424.530(a), which deals with denials, uses the term ''enrollment'' as well. Our change to § 424.535(a) would achieve consistency with § 424.530(a) in this regard.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Concerning our affiliation proposal (§§ 424.519 and 455.107), and in the following discussion, the principal burden would come from completion of the applicable enrollment application sections and the time involved in researching data. However, we do solicit public comment and feedback regarding these burdens.

There are also burdens associated with our remaining proposals as discussed later in this section.

A. ICRs Related to Affiliations (§§ 424.519 and 455.107)

Proposed §§ 424.519 and 455.107 require, respectively, that a Medicare, Medicaid or CHIP provider or supplier disclose information about present and past affiliations with certain currently or formerly enrolled Medicare, Medicaid or CHIP providers and suppliers. Medicare providers and suppliers would need to furnish this information via the paper or Internet-based version of the Form CMS–855 application. Though the specific vehicle for collecting this data from Medicaid and CHIP providers and suppliers would be left to the state's discretion, we anticipate that the information would be provided on an existing enrollment form or through a separate form created by the state. The principal burden involved with this collection would be the time and effort needed to—(1) obtain this information; and (2) complete and submit the appropriate section of the applicable form.

1. Medicare

a. Initially Enrolling Providers and Suppliers (§ 424.519(b))

Based on CMS data, an average of approximately 70,000 providers and suppliers seek to initially enroll in the Medicare program in any given 12-month period. This includes physicians; physician groups; non-physician practitioners; non-physician practitioner groups; Part A certified providers; Part B certified suppliers; Part B non-certified suppliers; and DMEPOS suppliers. Each of these providers and suppliers would be required to furnish the information described in § 424.519 on the appropriate Form CMS–855 enrollment application.

We estimate that it would take each provider or supplier an average of 10 hours to obtain and furnish this information. We believe this is a high-end estimate because providers and suppliers will generally know, or be able to research, their present and past affiliations and their relationship with Medicare, Medicaid, and CHIP. Also, many enrolling physicians, non-physician practitioners, and other small providers and suppliers will have few, if any, reportable affiliations due to, for example, the limited number of owners and managing employees they may have or have had. However, we do not wish to underestimate the potential burden and we acknowledge that there may be instances where the provider or supplier would need to contact the affiliated provider or supplier regarding certain information. With a 10-hour burden for 70,000 providers and suppliers, we estimate that the annual hourly burden for compliance with § 424.519 would be 700,000 hours.

Based on our experience, we believe that the reporting provider's or supplier's administrative staff (for example, officer managers and support staff) would be responsible for securing and listing affiliation data on the Form CMS–855. According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2014, the mean hourly wage for the general category of ''Office and Administrative Support Occupations'' is $17.08 per hour (see *http://www.bls.gov/oes/current/oes_nat.htm#43-0000* With fringe benefits and overhead, the per hour rate is $34.16.

Using this per hour rate, we estimate the annual ICR cost burden for initially enrolling providers and suppliers to be $23,912,000 (700,000 hours × $34.16).

b. Revalidating Providers and Suppliers (§ 424.519(b))

Medicare providers and suppliers, other than DMEPOS suppliers, are required to revalidate their Medicare enrollment every 5 years. (DMEPOS suppliers must revalidate every 3 years.) There are approximately 1.5 million providers and suppliers enrolled in the Medicare program; of this figure, roughly 87,000 are DMEPOS suppliers. For purposes of this ICR statement only, we project that future revalidations will be performed in relative accordance with the previously-referenced 5-year and 3-year periods.

TABLE 1—ESTIMATED NUMBER OF NON-DMEPOS SUPPLIER REVALIDATIONS: 2017–2021

Calendar year	Number of revalidations
2017	300,000
2018	300,000
2019	300,000
2020	300,000
2021	300,000

TABLE 2—ESTIMATED NUMBER OF DMEPOS SUPPLIER REVALIDATIONS: 2017–2021

Calendar year	Number of revalidations
2017	29,000
2018	29,000
2019	29,000
2020	29,000
2021	29,000

TABLE 3—ESTIMATED NUMBER OF REVALIDATIONS: 2015–2019 *

Calendar year	Number of revalidations
2017	329,000
2018	329,000
2019	329,000
2020	329,000
2021	329,000

*Table 3 combines the figures in Tables 1 and 2.

We note that we have the authority to perform ''off-cycle'' revalidations under § 424.515(e), that is, revalidations occurring more frequently than the 5-year and 3-year periods. Also, certain years may see fewer revalidations than others, for example, as a result of higher levels of attrition during a previous year. Since we cannot predict the exact number of revalidations (off-cycle or otherwise) that may occur in future, the figures in Table 2 represent our best estimates.

Through the revalidation process, providers and suppliers generally need to provide the same information as initially enrolling providers and suppliers. Hence, we estimate it would take revalidating providers and suppliers 10 hours to obtain and furnish affiliation information, and the work would be performed by administrative staff.

Using our estimate of 329,000 affected providers and suppliers each year, we project an annual ICR cost burden of $112,386,400 (329,000 × 10 hours × $34.16).

c. New and Changed Affiliations (§ 424.519(h))

Generally speaking, the Form CMS–855 does not presently collect information regarding the provider's or supplier's (or the provider's or supplier's owning or managing individuals' and organizations') interests in other Medicare providers and suppliers. As such, we cannot reasonably estimate the number of providers and suppliers that would submit Form CMS–855 change of information applications reporting a new or changed affiliation based on historical data. However, we project that it would take approximately 30 minutes (or .5 hours) for a provider or supplier to report and submit new or changed affiliation information to its Medicare contractor. We request comment on how often reportable affiliations are created or are changed, therefore necessitating reporting to CMS.

We estimate a total annual ICR burden on Medicare providers and suppliers from § 424.519 of 3,990,000 hours (700,000 + 3,290,000) at a cost of $136,298,400 ($23,912,000 + $112,386,400).

2. Medicaid and CHIP

a. Initially Enrolling Providers and Suppliers (§ 455.107(b))

Based on existing data, we estimate that 56,250 providers and suppliers in a given 12-month period seek to enroll in the Medicaid program or CHIP. As stated before, the mechanism for collecting the data required under § 455.107 would lie within the state's discretion. While burden may vary depending on the specific collection vehicle, we estimate it would take each provider or supplier an average of 10 hours to obtain and furnish this information, similar to our estimate for Medicare providers and suppliers. This would result in an annual ICR hour burden of 562,500 hours. At a per hour rate of $34.16, we estimate the annual cost burden to be $19,215,000 (562,500 hours × $34.16).

b. Revalidating Providers and Suppliers (§ 455.107(b))

According to State Program Integrity Assessment data, there are approximately 1.9 million Medicaid-enrolled and CHIP-enrolled providers nationwide. These providers must revalidate their enrollments every 5 years in accordance with § 455.414. For purposes of this ICR statement, we project that an average of one-fifth or 380,000 (1.9 million × 0.20), of existing Medicaid and CHIP providers would be required to revalidate their enrollment each year and, consequently, furnish the information required under § 455.107(b). This would result in an annual ICR hour burden of 3,800,000 hours. Using an hourly rate of $34.16, we estimate the annual ICR cost burden for revalidating Medicaid and CHIP providers suppliers to be $129,808,000 (3,800,000 hours × $34.16).

c. New and Changed Affiliations (§ 455.107(h))

Some states do not collect information regarding the provider's (or the provider's owning or managing individuals' and organizations') interests in other Medicaid or CHIP providers or Medicare providers or suppliers. Therefore, we cannot reasonably estimate the number of Medicaid and CHIP providers that would report data regarding new or changed affiliations. We have no past data on which to base such a projection. However, we project that it would take approximately 30 minutes (or 0.5 hours) for a provider or supplier to report and submit new or changed affiliation information. We are soliciting comments on how often reportable affiliations are created or changed therefore necessitating reporting to the states.

We estimate a total annual ICR burden on Medicaid and CHIP providers and suppliers from § 455.107 of 4,362,500 hours at a cost of $149,023,000 ($19,215,000 + $129,808,000).

3. Collection of Information From States

It is possible that states may be required to report to CMS certain information regarding its processing of data submitted pursuant to § 455.107. This could include, for example, the number of applications in which an affiliation was reported and the number of cases in which the state determined that an affiliation posed an undue risk. However, we are unable to estimate the possible ICR burden because we do not know whether, to what extent, and by what vehicle data concerning § 455.107 would be reported to CMS.

4. Total Burden

We estimate a total annual ICR hour burden on Medicare, Medicaid, and CHIP providers and suppliers from our proposal of 8,352,500 hours at a cost of $285,321,400.

B. ICRs Related to Different Name, Numerical Identifier or Business Identity (§§ 424.530(a)(12) and 424.535(a)(18))

We do not have historical data to predict the number of instances in which we would determine that a

revoked provider or supplier is attempting to enroll in Medicare or is enrolled under a different name, numerical identifier or business identity. Since evidence of these activities are confined to the results of unique investigations, we believe the examples cited in the preamble text cannot form the basis of a representative sample from which to inform projections. Consequently, we cannot estimate the ICR burden that may result from such denials and revocations, which would primarily involve the submission of Form CMS–855 applications following denials or following the expiration of reenrollment bars. To enhance our ability to formulate an estimate of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 8,000 potentially affected providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate because we do not have sufficient data to provide an estimate at this time.

C. ICRs Related To Billing for Non-Compliant Location (§ 424.535(a)(20))

We do not have sufficient historical data to form an estimate of the potential ICR burden of this proposal, which would primarily involve the submission of Form CMS–855 applications following the expiration of reenrollment bars. While there is data concerning the number of locations that are terminated from Medicare for non-compliance each year, we cannot predict the number of ''additional'' locations that would be terminated due to § 424.535(a)(20). In other words, if a provider or supplier has five locations and one is terminated for non-compliance, we have no way to predict whether any or all of the remaining four locations would be terminated. This is because each provider's and supplier's circumstances are different. Consequently, we are unable to project the total number of terminated locations.

D. ICRs Related to Abusive Ordering, Certifying, Referring or Prescribing of Part A or B Services, Items or Drugs (§ 424.535(a)(21))

As this is a new provision for which there is no historical data, we cannot project the number of instances in which we would revoke enrollment under § 424.535(a)(21). Therefore, we are unable to estimate the total potential ICR burden associated with this proposal, which would primarily involve the submission of Form CMS–855 applications following the expiration of reenrollment bars. To enhance our ability to formulate an estimate of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 4,000 potentially affected physicians and eligible professionals could serve as a reasonable approximation; and (2) the potential cost burden to physicians and eligible professionals. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

E. ICRs Related to Changes in Maximum Reenrollment Bars (§ 424.535(c))

We do not anticipate any collection burden resulting from our revisions to § 424.535(c). In fact, the burden may actually decrease because certain providers and suppliers may be barred from Medicare for a longer period of time and thus would submit Form CMS–855 applications less frequently.

F. ICRs Related to Reapplication Bar (§ 424.530(f))

We do not anticipate any collection burden resulting from our addition of § 424.530(f). Additional applications would not be submitted because of our proposal.

G. ICRs Related to Revocation for Referral of Debt to the United States Department of Treasury (§ 424.535(a)(17))

Each year on average, roughly 2,000 Medicare providers and suppliers have debts that are referred to the Department of Treasury. However, we are unable to predict the number of revocations that would result from our proposal because the circumstances of each case would be different. We believe that any ICR burden associated with this proposal would principally involve the submission of Form CMS–855 applications following the expiration of reenrollment bars. We note that as with several of our other proposals, § 424.535(a)(17) is a new provision for which there is no historical data, and it cannot be assumed that all 2,000 providers and suppliers would have their Medicare enrollments revoked. Therefore, to enhance our ability to formulate an estimate of the ICR burden associated with this provision, we are soliciting comment on—(1) whether 2,000 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden on providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

H. ICRs Related to Reporting Requirements (§ 424.535(a)(9))

We believe there would be an increase in the number of revoked providers and suppliers resulting from our expansion of § 424.535(a)(9). However, we cannot estimate this number, for the specific facts of each case would be different. As such, we cannot project the potential collection burden associated with this proposal, which would primarily involve the submission of Form CMS–855 applications following the expiration of reenrollment bars. To enhance our ability to formulate a projection of potential collection burden associated with this proposal, we are soliciting comment on—(1) whether an annual figure of 10,000 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers.

I. ICRs Related to Payment Suspensions (§ 424.530(a)(7) and § 405.371)

We are unable to estimate the total ICR burden of these provisions, for we cannot predict the number of instances in which we would deny enrollment under § 424.530(a)(7) or suspend payment under § 405.371. Nor do we have sufficient historical data on which we can estimate the burden of payment suspensions, which would consist mostly of potential lost payments the amount of which we are unable to quantify; the principal ICR burden associated with § 424.530(a)(7) would be the submission of Form CMS–855 applications following denials. To enhance our ability to formulate an estimate of the burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 1,000 potentially affected providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

J. ICRs Related to Denials and Revocations for Other Federal Program Termination or Suspension (§ 424.530(a)(14))

The principal ICR burden associated with this provision would involve the submission of Form CMS–855 applications following denials or following the expiration of reenrollment bars. However, we cannot project the total ICR burden associated with these new provisions because we cannot predict the number of instances in which we would deny or revoke

enrollment. To enhance our ability to formulate projections of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 2,500 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

K. ICRs Related to Extension of Revocation (§ 424.535(i))

As this is a new prevision and there is no historical data on which to make an estimate, we cannot predict the number of instances in which we would revoke enrollment for this reason or the number of locations or enrollments that would be involved; thus, we are unable to estimate the total potential collection burden, which would mostly involve the submission of Form CMS–855 applications following the expiration of reenrollment bars To enhance our ability to formulate an estimate of the ICR burden associated with this provision, we are soliciting comment on—(1) whether annual figures of 5,000 potentially impacted providers and suppliers and 12,000 potentially revoked enrollments and terminated practice locations could serve as reasonable approximations; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

L. Voluntary Termination Pending Revocation (§ 424.535(j))

As this is a new provision and there is no historical data on which to base a projection, we are unable to predict the number of instances in which we would revoke enrollment. Therefore, we cannot estimate the potential collection burden associated with § 424.535(j), which would principally involve the submission of Form CMS–855 applications following the expiration of reenrollment bars. Moreover, since evidence of these activities is confined to the results of unique investigations, we believe the examples cited in the preamble text cannot form the basis of a representative sample from which to inform projections. However, to enhance our ability to project of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 2,000 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not a projection since we do not have sufficient data on which to make a projection at this time.

M. ICRs Related to Part A/B Ordering, Certifying, Referring, and Prescribing (§§ 424.507 and 424.516)

1. Enrollment

The principal burden associated with this proposal would involve the completion of the applicable Form CMS–855.

Based on CMS statistics, we estimate that approximately 200,000 non-enrolled and non-opted out physicians and, when eligible under state law, non-physician practitioners, are ordering, certifying, referring or prescribing Part A or B services, items or drugs. Per revised § 424.507, these individuals would be required to enroll in or opt-out of Medicare by January 1, 2018.

We believe that these persons, assuming they do not opt-out, would complete the Form CMS–855O in lieu of the Form CMS–855I because the former application is shorter and the applicants are not seeking Medicare Part B billing privileges. As we are unable to precisely determine the percentage of the 200,000-individual universe that consists of physicians as opposed to non-physician practitioners, we will assume that 100,000 physicians and 100,000 non-physician practitioners would be affected, though we welcome comments on this estimate.

Because of the relative brevity of the Form CMS–855O, we believe that physicians and non-physician practitioners would themselves complete the application, rather than delegating this task to staff. According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2014 (see *http://www.bls.gov/oes/current/oes_nat.htm#43-0000*), the mean hourly wage for the general category of ''Physicians and Surgeons'' is $93.74, and the mean hourly wage for the general BLS category of ''Health Diagnosing and Treating Practitioners, All Other'' is $40.89. With fringe benefits and overhead, the respective per hour rates are $187.48 and $81.78.

On average, we project that it takes individuals approximately .5 hours to complete and submit the Form CMS–855O (OMB Control No. 0938–1135) or an opt-out affidavit. This results in an ICR burden for physicians of $9,374,000 (50,000 hours × $187.48). The burden for non-physician practitioners would be $4,089,000 (50,000 hours × $81.78). The total ICR burden would thus be 100,000 hours at a cost of $13,463,000. We believe this burden would generally be incurred in 2017, prior to the January 1, 2018 effective date.

2. Documentation

We are also proposing in revised § 424.516(f) that a provider or supplier furnishing a Part A or B service, item or drug, as well as the physician or, when permitted, eligible professional who ordered, certified, referred or prescribed the Part A or B service, item or drug must maintain documentation for 7 years from the date of the service and furnish access to that documentation upon a CMS or Medicare contractor request.

The burden associated with the requirements in § 424.516(f) would be the time and effort necessary to both maintain documentation on file and to furnish the information upon request to CMS or a Medicare contractor. While the requirement is subject to the PRA, we believe the associated burden is negligible. As discussed in the previously referenced November 19, 2008 final rule (73 FR 69915) and the April 27, 2012 final rule (77 FR 25313), we believe the burden associated with maintaining documentation and furnishing it upon request is a usual and customary business practice.

N. ICRs Related to Temporary Moratorium (§ 424.570)

We are unable to estimate the number of applications that would be approved or denied as a result of our changes to § 424.570, for we have insufficient data on which to base a precise projection. Consequently, we cannot estimate the ICR burden of these revisions; which would mostly involve the submission of Form CMS–855 applications by previously denied providers and suppliers following the lifting of a moratorium. To enhance our ability to formulate an estimate of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 2,000 potentially impacted providers and suppliers could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

O. ICRs Related to Surety Bonds (§ 424.57(d))

We believe that CMS may reject some new and existing surety bonds based on surety non-payment, which would require the DMEPOS supplier to obtain a new surety bond in order to enroll in or maintain its enrollment in Medicare. This would require a supplier to do additional paperwork to obtain and

submit a new surety bond and to report this information to Medicare via the Form CMS–855S. This burden is approved under OMB Control Number 0938–1065 and is estimated to take 3 hours to complete. However, we do not have adequate data to help us estimate the number of suppliers whose bonds would be rejected, or the number that would obtain new bonds, though we welcome public feedback regarding the possible burden.

P. ICRs Related to Reactivations (§ 424.540(b))

We are unable to project the number of certifications that would be submitted versus the number of complete Form CMS–855 applications; therefore, we cannot predict the number of instances in which a Form CMS–855 would be requested. To enhance our ability to formulate a projection of the ICR burden associated with this provision, we are soliciting comment on—(1) whether an annual figure of 10,000 instances in which a Form CMS–855 would be requested could serve as a reasonable approximation; and (2) the potential cost burden to providers and suppliers. However, we stress that this is not an estimate since we do not have sufficient data on which to make an estimate at this time.

Q. Revision to Definition of Enrollment (§§ 424.502; 424.505; 424.510; 424.535(a))

As these revisions are primarily technical in nature, we do not foresee an associated ICR burden.

R. Total ICR Overall Burden

Based on the foregoing, Table 4 estimates the total ICR hour and Table 5 estimates the total ICR cost burdens in the first 3 years of this rule. For purposes of this estimate, the burden for revised § 424.507 would be incurred in the first year (projected to be 2017).

TABLE 4—ESTIMATED ANNUAL REPORTING/RECORDKEEPING HOUR BURDEN

	Year 1	Year 2	Year 3
Affiliations	8,352,500	8,352,500	8,352,500
§ 424.507	100,000	0	0
Total	8,452,500	8,352,500	8,352,500

TABLE 5—ESTIMATED ANNUAL REPORTING/RECORDKEEPING COST BURDEN

	Year 1	Year 2	Year 3
Affiliations	$285,321,400	$285,321,400	$285,321,400
§ 424.507	13,463,000	0	0
Total	298,784,400	285,321,400	285,321,400

Since 3 years is the maximum length of an OMB approval, we must average these totals over a 3-year period. This results in an annual burden of 8,385,833 hours at a cost of $289,809,067.

We welcome comments on all aspects of and estimates in our ICR section.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–6058–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

As previously stated, this proposed rule is necessary to implement sections 1866(j)(5) and 1902(kk)(3) of the Act, which require providers and suppliers to disclose information related to any current or previous affiliation with a provider or supplier that has uncollected debt; has been or is subject to a payment suspension under a federal health care program; has been excluded from participation under Medicare, Medicaid or CHIP; or has had its billing privileges denied or revoked. This proposed rule is also necessary to address other program integrity issues that have arisen. We believe that all of these provisions would—(1) enable CMS and the states to better track current and past relationships involving different providers and suppliers; and (2) assist our efforts to stem fraud, waste, and abuse, hence protecting the Medicare Trust Funds.

B. Overall Impact

1. Background

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4) and Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule—(1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or

planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The costs of our proposals would exceed $100 million in each of the first 3 years of this proposed rule. (See sections III. and V.C. of this proposed rule.) We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and thus also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis, which to the best of our ability presents the costs and benefits of the rulemaking. Therefore, OMB has reviewed these proposed regulations, and the Departments have provided the following assessment of their impact.

2. Impact

There are several categories of costs that would be associated with this rule.

First, providers and suppliers would incur costs in completing all or part of the applicable Form CMS–855. Those costs that we are able to estimate are outlined in section III. of this proposed rule.

Second, denied and revoked suppliers could incur costs associated with potential lost billings and the filing of appeals of denials and revocations. However, no estimate is possible because—(1) we cannot project the number of providers and suppliers that would be denied or revoked, as these are new provisions for which there is no precedent upon which to base an estimate; and (2) each provider and supplier and their billing amounts are different.

Third, we believe that CMS, Medicare contractors, and the states would incur costs, in implementing and enforcing our proposed affiliation disclosure provision. These could include information technology system changes and provider education. We have no means of predicting these costs, as these are new provisions for which there is little precedent upon which to base cost estimates; moreover, each state Medicaid program varies in terms of size, system needs, and provider outreach activities. We solicit comment, however, on the types of costs that may be incurred and the potential amount of those costs.

We believe this rule would have benefits resulting from the denial or revocation of providers and suppliers that pose program integrity risks to Medicare, Medicaid, and CHIP. However, we are unable to project the resultant potential savings to these programs.

This rule would not involve transfers from providers and suppliers to the federal government.

C. Anticipated Effects

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organization, and small governmental jurisdictions. Most entities and most other providers and suppliers are small entities, either by nonprofit status or by having revenues less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity.

For several reasons, we do not believe that this proposed rule would have a significant economic impact on a substantial number of small businesses. First, the furnishing of affiliation data and the completion of the Form CMS 855O would be required very infrequently, in many cases either only one time or once every several years. The cost burden per provider or supplier (only 0.5 hours for the Form CMS–855O and 10 hours for affiliation data, the latter of which is a high end estimate) would be less than $1,000, which would not be a significant burden on a provider or supplier. (See section III. of this proposed rule.) Second, it is true that some small businesses could be denied enrollment or have their enrollments revoked under our provisions. Yet the number of denials and revocations per year is currently—and would continue to be under our new provisions—very small when compared to the total number of enrolled providers and suppliers nationwide. Therefore, we do not believe that our new denial and revocation reasons would impact a substantial number of small businesses.

D. Effects on Small Rural Hospitals

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and therefore the Secretary has determined, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that is approximately $144 million. This rule does not mandate any requirements for state, local or tribal governments or for the private sector, although we noted earlier the possibility that states may incur costs associated with system changes, provider education, and reporting data to CMS concerning § 455.107.

F. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law or otherwise has federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

G. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a0004/a-4/pdf*), in Table 6 we have prepared an accounting statement showing estimates, over the first 3 years of the rule's implementation, of the total cost burden to providers and suppliers for reporting data using, respectively, 7 percent and 3 percent annualized discount rates.

TABLE 6—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED COSTS

[$ in millions]

Category Costs *	Estimates	Units		
		Year dollar	Discount rate (90%)	Period covered
Annualized Monetized ($million/year)	289.8 289.8	2015 2015	7 3	FY 2017–FY 2019 FY 2017– FY 2019

* Cost associated with the information collection requirements.

H. Alternatives Considered

We considered and adopted several alternatives to reduce the overall burden of our provisions.

First, we contemplated a 10-year timeframe for the affiliation ''look-back'' period, but we propose to limit the timeframe to 5 years. We believe this would ease the burden on Medicare, Medicaid, and CHIP providers and suppliers by restricting the volume of information that must be reported. Similarly, we propose that changed data regarding past affiliations need not be reported.

Second, we proposed a ''knew or should reasonably have known'' standard for disclosing affiliations. We believe this would reduce the burden on providers and suppliers in terms of researching and investigating information on entities and individuals with whom they have or have had a relationship. We recognize that providers and suppliers may occasionally experience difficulty in obtaining certain affiliation data if, for instance, they must contact a previously affiliated provider or supplier for the information. We have also decided to solicit feedback from the public concerning whether we should establish a ''reasonableness'' test, whereby we explain what constitutes a sufficient effort to obtain information in the context of the ''should reasonably have known'' standard.

Third, we have established a January 1, 2018 effective date for compliance with revised § 424.507. We contemplated possible effective dates in 2017, but we believe that a January 1, 2018 date would help give providers and suppliers sufficient time to enroll in or opt-out of Medicare.

Although we considered 5-year and 10-year lookback periods for disclosable events, we are not proposing a specific lookback period. Even if a particular action occurred more than 5 or years ago, it could still raise concerns about the potential risk a newly enrolling provider poses. For this reason, we must retain the flexibility to address a variety of factual scenarios. Nonetheless, we recognize that a definitive lookback period would be less burdensome (in terms of researching and reporting information) than an unlimited period, and have solicited public comment regarding whether a specific period should be used and, if so, the appropriate length.

I. Uncertainties

There are two principal uncertainties associated with this proposed rule.

First, we have no means of projecting the number of providers and suppliers that would be denied or revoked under our new and revised provisions. This is because we have little historical data on which we can base a precise estimate.

Second, we are uncertain as to the number of physicians or non-physician practitioners who would be required to enroll in or opt-out of Medicare pursuant to revised § 424.507. The figures we used in sections III.L. of this proposed rule are merely rough estimates, and we would appreciate comments from providers and suppliers regarding the potential number of affected parties.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases. Medical devices, Medicare Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 2. Amend § 405.371 by—

■ a. Revising paragraph (a) introductory text.

■ b. Amending paragraph (a)(1) by removing the ''; '' at the end of the paragraph and adding in its place ''.''

■ c. Amending paragraph (a)(2) by removing ''; or'' at the end of paragraph and adding in its place ''.''.

■ d. Adding a new paragraph (a)(4).

The revision and addition read as follows.

§ 405.371 Suspension, offset, and recoupment of Medicare payments to providers and suppliers of services.

(a) *General rules*—Medicare payments to providers and suppliers, as authorized under this subchapter (excluding payments to beneficiaries), may be one of the following:

* * * * *

(4) Suspended, in whole or in part, by CMS or a Medicare contractor if the provider or supplier has been subject to a Medicaid payment suspension under § 455.23(a)(1) of this chapter.

* * * * *

■ 3. Amend § 405.425 by revising paragraphs (i) and (j) to read as follows:

§ 405.425 Effects of opting—out of Medicare.

* * * * *

(i) The physician or practitioner who has not been excluded under sections 1128, 1156 or 1892 of Social Security Act or whose Medicare enrollment is not revoked under § 424.535 of this chapter may order, certify the need for, or refer a beneficiary for Medicare—covered items and services, provided the physician or practitioner is not paid, directly or indirectly, for such services (except as provided in § 405.440).

(j) The physician or practitioner who is excluded under sections 1128, 1156 or 1892 of the Social Security Act or whose Medicare enrollment is revoked under § 424.535 of this chapter may not order, prescribe or certify the need for Medicare-covered items and services except as provided in § 1001.1901 of this title, and must otherwise comply with the terms of the exclusion in accordance with § 1001.1901 effective with the date of the exclusion.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 4. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 5. Amend § 424.57 by adding paragraph (d)(16) to read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

* * * * *

(d) * * *

(16) *Surety non-payment.* CMS may reject an enrolling or enrolled DMEPOS supplier's new or existing surety bond if the surety that issued the bond has failed to make a required payment to CMS under paragraph (d) of this section. In making its determination, CMS considers the following factors:

(i) The total number of Medicare-enrolled DMEPOS suppliers to which the surety has issued surety bonds.

(ii) The total number of instances in which the surety has failed to make payment to CMS.

(iii) The reason(s) for the surety's failure(s) to pay.

(iv) The percentage of instances in which the surety has failed to pay.

(v) The total amount of money that the surety has failed to pay.

(vi) Any other information that CMS deems relevant to its determination.

* * * * *

■ 6. Amend § 424.502 by adding the definitions of ''Affiliation'', ''NPI'', and ''PECOS'' in alphabetical order, and by amending the definition of ''Enroll/Enrollment'' by revising the introductory text and paragraphs (2) and (4) to read as follows:

§ 424.502 Definitions.

* * * * *

Affiliation means, for purposes of applying § 424.519, any of the following:

(1) A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.

(2) A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.

(3) An interest in which an individual or entity exercises operational or managerial control over or directly or indirectly conducts the day-to-day operations of another organization (including, for purposes of this provision, sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.

(4) An interest in which an individual is acting as an officer or director of a corporation.

(5) Any reassignment relationship under § 424.80.

* * * * *

Enroll/Enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs.

* * * * *

(2) Except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs, validating the provider's or supplier's eligibility to provide items or services to Medicare beneficiaries.

* * * * *

(4) Except for those suppliers that complete the Form CMS–855O, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs, granting the Medicare provider or supplier Medicare billing privileges.

* * * * *

NPI stands for National Provider Identifier.

* * * * *

PECOS stands for Internet—based Provider Enrollment, Chain, and Ownership System.

* * * * *

■ 7. Revise § 424.505 to read as follows:

§ 424.505 Basic enrollment requirement.

To receive payment for covered Medicare items or services from either Medicare (in the case of an assigned claim) or a Medicare beneficiary (in the case of an unassigned claim), a provider or supplier must be enrolled in the Medicare program. Except for those suppliers that complete the Form CMS–855O or CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order, certify, refer, or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs, once enrolled the provider or supplier receives billing privileges and is issued a valid billing number effective for the date a claim was submitted for an item that was furnished or a service that was rendered. (See 45 CFR part 162 for information on the NPI and its use as the Medicare billing number.)

■ 8. Revise § 424.507 to read as follows:

§ 424.507 Ordering, certifying, referring and prescribing covered services, items, and drugs for Medicare beneficiaries.

(a) *Conditions for payment of claims for ordered, certified, referred, or prescribed covered Part A or B services, items or drugs*—(1) *Ordered, certified, referred, or prescribed covered Part A or B services, items or drugs*. To receive payment for ordered, certified, referred, or prescribed covered Part A or B services, items or drugs, a provider or supplier must meet all of the following requirements:

(i) The ordered, certified, referred, or prescribed covered Part A or B service, item or drug must have been ordered, certified, referred or prescribed by a physician or, when permitted, an eligible professional (as defined in § 424.506(a)).

(ii) The claim from the provider or supplier must contain the legal name and the NPI of the physician or the eligible professional (as defined in § 424.506(a)) who ordered, certified, referred or prescribed the Part A or B service, item or drug.

(iii) The physician or, when permitted, other eligible professional, as defined in § 424.506(a), who ordered,

certified, referred, or prescribed the Part A or B service, item or drug must—

(A) Be identified by his or her legal name;

(B) Be identified by his or her NPI; and

(C)(*1*) Be enrolled in Medicare in an approved status; or

(*2*) Have validly opted-out of the Medicare program.

(iv) If the Part A or B service, item or drug is ordered, certified, referred, or prescribed by—

(A) An unlicensed resident (as defined in § 413.75 of this chapter), or by a non-enrolled licensed resident (as defined in § 413.75 of this chapter), the claim must identify a teaching physician, who must be enrolled in Medicare in an approved status, as follows:

(*1*) As the ordering, certifying, referring or prescribing supplier.

(*2*) By his or her legal name.

(*3*) By his/her NPI.

(B) A licensed resident (as defined in § 413.75 of this chapter), he or she must have a provisional license or be otherwise permitted by State law, where the resident is enrolled in an approved graduate medical education program, to practice or to order, certify, refer or prescribe such services, items, and drugs, the claim must identify by legal name and NPI either of the following:

(*1*) Resident, who is enrolled in Medicare in an approved status to order, certify, refer or prescribe.

(*2*) Teaching physician, who is enrolled in Medicare in an approved status.

(2) *Part A and B beneficiary claims.* To receive payment for ordered, certified, referred, or prescribed covered Part A or B services, items or drugs, a beneficiary's claim must meet all of the following requirements:

(i) The physician or, when permitted, other eligible professional (as defined in § 424.506(a)) who ordered, certified, referred, or prescribed the Part A or B service, item or drug must—

(A) Be identified by his or her legal name; and

(B)(*1*) Be enrolled in Medicare in an approved status; or

(2) Have validly opted out of the Medicare program.

(ii) If the Part A or B service, item or drug is ordered, certified, referred or prescribed by—

(A) An unlicensed resident (as defined in § 413.75 of this chapter) or a non-enrolled licensed resident, (as defined in § 413.75 of this chapter) the claim must identify a teaching physician, who must be enrolled in Medicare in an approved status as follows:

(*1*) As the ordering, certifying, referring or prescribing supplier.

(*2*) By his or her legal name.

(B) A licensed resident (as defined in § 413.75 of this chapter), he or she must have a provisional license or are otherwise permitted by State law, where the resident is enrolled in an approved graduate medical education program, to practice or to order, certify, refer, or prescribe such services, items or drugs, the claim must identify by legal name the—

(*1*) Resident, who is enrolled in Medicare in an approved status to order, certify, refer or prescribe; or

(*2*) Teaching physician, who is enrolled in Medicare in an approved status.

(b) *Denial of provider or supplier submitted claims.* Notwithstanding § 424.506(c)(3), a Medicare contractor denies a claim from a provider or a supplier for ordered, certified, referred or prescribed Part A or B covered services, items or drugs described in paragraph (a) of this section if the claim does not meet the requirements of paragraph (a)(1) of this section.

(c) *Denial of beneficiary-submitted claims.* A Medicare contractor denies a claim from a Medicare beneficiary for ordered, certified, referred or prescribed covered Part A or B services, items or drugs as described in paragraph (a) of this section if the claim does not meet the requirements of paragraph (a)(2) of this section.

■ 9. Amend § 424.510 by revising paragraph (a)(3) to read as follows:

§ 424.510 Requirements for enrolling in the Medicare program.

(a) * * *

(3) To be enrolled solely to order, certify, refer or prescribe Medicare-covered Part A or B services, items or drugs, or to prescribe Part D drugs, a physician or non-physician practitioner must meet the requirements specified in paragraph (d) of this section except for paragraphs (d)(2)(iii)(B), (d)(2)(iv), (d)(3)(ii), and (d)(5), (6), and (9) of this section.

* * * * *

■ 10. Amend § 424.516 by revising paragraphs (f)(1)(i) introductory text, (f)(1)(ii), (f)(2)(i) introductory text, and (f)(2)(ii) to read as follows:

§ 424.516 Additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program.

* * * * *

(f) * * *

(1)(i) A provider or a supplier that furnishes covered ordered, certified, referred, or prescribed Part A or B services, items or drugs is required to—

* * * * *

(ii) The documentation includes written and electronic documents (including the NPI of the physician or, when permitted, other eligible professional who ordered, certified, referred, or prescribed the Part A or B service, item or drug) relating to written orders, certifications, referrals, prescriptions, and requests for payments for Part A or B services, items or drugs.

(2)(i) A physician or, when permitted, an eligible professional who orders, certifies, refers, or prescribes Part A or B services, items or drugs is required to—

* * * * *

(ii) The documentation includes written and electronic documents (including the NPI of the physician or, when permitted, other eligible professional who ordered, certified, referred, or prescribed the Part A or B service, item or drug) relating to written orders, certifications, referrals, prescriptions or requests for payments for Part A or B services, items, or drugs.

■ 11. Add § 424.519 to read as follows:

§ 424.519 Disclosure of affiliations.

(a) *Definitions.* For purposes of this section only, the following terms apply:

(1) ''Uncollected debt'' only applies to the following:

(i) Medicare, Medicaid or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider or supplier.

(ii) Civil money penalties (as defined in § 424.57(a)).

(iii) Assessments (as defined in § 424.57(a)).

(2) ''Revoked,'' ''Revocation,'' ''Terminated,'' and ''Termination'' include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid or CHIP enrollment to avoid a potential revocation or termination.

(b) *General.* A provider or supplier that is submitting an initial or revalidating Form CMS–855 enrollment application (via paper or Internet—based PECOS) must disclose whether it or any of its owning or managing employees or organizations (consistent with the terms ''owner'' and ''managing employee'' as defined in § 424.502) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid or CHIP provider or supplier that has or had any of the following:

(1) Currently has an uncollected debt to Medicare, Medicaid or CHIP, regardless of the following:

(i) The amount of the debt.
(ii) Whether the debt is currently being repaid.
(iii) Whether the debt is currently being appealed.
(2) Has been or is subject to a payment suspension under a federal health care program (as that term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed.
(3) Has been or is excluded from participation in Medicare, Medicaid or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed.
(4) Has had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated, regardless of the following:
(i) The reason for the denial, revocation or termination.
(ii) Whether the denial, revocation or termination is currently being appealed.
(iii) When the denial, revocation or termination occurred or was imposed.
(c) *Information.* The provider or supplier must disclose the following information about each reported affiliation:
(1) General identifying data about the affiliated provider or supplier. This includes:
(i) Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).
(ii) ''Doing business as'' name (if applicable).
(iii) Tax identification number.
(iv) NPI.
(2) Reason for disclosing the affiliated provider or supplier.
(3) Specific data regarding the affiliation relationship, including the following:
(i) Length of the relationship.
(ii) Type of relationship.
(iii) Degree of affiliation.
(4) If the affiliation has ended, the reason for the termination.
(d) *Mechanism.* The information required to be disclosed under paragraphs (b) and (c) this section must be furnished to CMS or its contractors via the Form CMS–855 application (paper or the Internet-based PECOS enrollment process).
(e) *Denial or revocation.* The failure of the provider or supplier to fully and completely disclose the information specified in paragraphs (b) and (c) of this section when the provider or supplier knew or should reasonably have known of this information may result in either of the following:
(1) The denial of the provider's or supplier's initial enrollment application under § 424.530(a)(1) and, if applicable, § 424.530(a)(4).
(2) The revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(1) and, if applicable, § 424.535(a)(4).
(f) *Undue risk.* Upon receiving the information described in paragraphs (b) and (c) of this section, CMS determines whether any of the disclosed affiliations poses an undue risk of fraud, waste or abuse by considering the following factors:
(1) The duration of the affiliation.
(2) Whether the affiliation still exists and, if not, how long ago it ended.
(3) The degree and extent of the affiliation.
(4) If applicable, the reason for the termination of the affiliation.
(5) Regarding the affiliated provider's or supplier's action under paragraph (b) of this section:
(i) The type of action.
(ii) When the action occurred or was imposed.
(iii) Whether the affiliation existed when the action occurred or was imposed.
(iv) If the action is an uncollected debt:
(A) The amount of the debt.
(B) Whether the affiliated provider or supplier is repaying the debt.
(C) To whom the debt is owed.
(v) If a denial, revocation, termination, exclusion or payment suspension is involved, the reason for the action.
(6) Any other evidence that CMS deems relevant to its determination.
(g) *Determination of undue risk.* A determination by CMS that a particular affiliation poses an undue risk of fraud, waste or abuse will result in, as applicable, the denial of the provider's or supplier's initial enrollment application under § 424.530(a)(13) or the revocation of the provider's or supplier's Medicare enrollment under § 424.535(a)(19).
(h) *New or changed information.* (1) A provider or supplier must report the following:
(i) New or changed information regarding existing affiliations.
(ii) Information regarding new affiliations.
(2) A provider or supplier is not required to do either of the following:
(i) Report new or changed information regarding past affiliations (except as part of a Form CMS–855 revalidation application).
(ii) Report affiliation data in that portion of the Form CMS–855 application that collects affiliation information if the same data is being reported in the ''owning or managing control'' (or its successor) section of the Form CMS–855 application.
(i) *Undisclosed affiliations.* CMS may apply § 424.530(a)(13) or § 424.535(a)(19) to situations where a disclosable affiliation (as described in § 424.519(b) and (c)) poses an undue risk of fraud, waste or abuse, but the provider or supplier has not yet reported or is not required at that time to report the affiliation to CMS.

■ 12. Amend § 424.530 by revising paragraph (a)(7) and adding paragraphs (a)(12), (13), (14), and (f) to read as follows:

§ 424.530 Denial of enrollment in the Medicare program.

(a) * * *
(7) *Payment suspension.* (i) The provider or supplier, or any owning or managing employee or organization of the provider or supplier, is currently under a Medicare or Medicaid payment suspension as defined in §§ 405.370 through 405.372 or in § 455.23, of this chapter.
(ii) CMS may apply this provision to the provider or supplier under any of the provider's, supplier's, or owning or managing employee's or organization's current or former names, numerical identifiers, or business identities or to any of its existing enrollments.
(iii) In determining whether a denial is appropriate, CMS considers the following factors:
(A) The specific behavior in question.
(B) Whether the provider or supplier is the subject of other similar investigations.
(C) Any other information that CMS deems relevant to its determination.
* * * * *
(12) *Revoked under different name, numerical identifier or business identity.* The provider or supplier is currently revoked under a different name, numerical identifier or business identity, and the applicable reenrollment bar period has not expired. In determining whether a provider or supplier is a currently revoked provider or supplier under a different name, numerical identifier or business identity, CMS investigates the degree of commonality by considering the following factors:
(i) Owning and managing employees and organizations (regardless of whether they have been disclosed on the Form CMS–855 application).
(ii) Geographic location.
(iii) Provider or supplier type.
(iv) Business structure.
(v) Any evidence indicating that the two parties are similar or that the provider or supplier was created to circumvent the revocation or reenrollment bar.
(13) *Affiliation that poses undue risk of fraud.* CMS determines that the

provider or supplier has or has had an affiliation under § 424.519 that poses an undue risk of fraud, waste or abuse to the Medicare program.

(14) *Other program termination or suspension.* (i) The provider or supplier is currently terminated or suspended (or otherwise barred) from participation in a particular State Medicaid program or any other federal health care program, or the provider's or supplier's license is currently revoked or suspended in a State other than that in which the provider or supplier is enrolling. In determining whether a denial under this paragraph is appropriate, CMS considers the following factors:

(A) The reason(s) for the termination, suspension or revocation.

(B) Whether, as applicable, the provider or supplier is currently terminated or suspended (or otherwise barred) from more than one program (for example, more than one State's Medicaid program), has been subject to any other sanctions during its participation in other programs or by any other State licensing boards or has had any other final adverse actions imposed against it.

(C) Any other information that CMS deems relevant to its determination.

(ii) CMS may apply paragraph (a)(14)(i) of this section to the provider or supplier under any of its current or former names, numerical identifiers or business identities, and regardless of whether any appeals are pending.

* * * * *

(f) *Reapplication bar.* CMS may prohibit a prospective provider or supplier from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to gain enrollment in the Medicare program.

(1) The reapplication bar applies to the prospective provider or supplier under any of its current, former, or future names, numerical identifiers or business identities.

(2) CMS determines the bar's length by considering the following factors:

(i) The materiality of the information in question.

(ii) Whether there is evidence to suggest that the provider or supplier purposely furnished false or misleading information or deliberately withheld information.

(iii) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(iv) Any other information that CMS deems relevant to its determination.

■ 13. Amend § 424.535 by—

■ a. In paragraph (a) introductory text by removing the term ''billing privileges'' and adding in its place the phrase ''enrollment''.

■ b. Revising paragraphs (a)(9) and (12).

■ c. Adding and reserving paragraphs (a)(15) and (16).

■ d. Adding paragraphs (a)(17) through (21).

■ e. Revising paragraph (c).

■ f. Adding paragraphs (i) and (j).

The additions and revisions read as follows:

§ 424.535 Revocation of enrollment in the Medicare program.

* * * * *

(a) * * *

(9) *Failure to report.* The provider or supplier did not comply with the reporting requirements specified in § 424.516(d) or (e), § 410.33(g)(2) of this chapter or § 424.57(c)(2). In determining whether a revocation under this paragraph is appropriate, CMS considers the following factors:

(i) Whether the data in question was reported.

(ii) If the data was reported, how belatedly.

(iii) The materiality of the data in question.

(iv) Any other information that CMS deems relevant to its determination.

* * * * *

(12) *Other program termination.* (i) The provider or supplier is terminated, revoked or otherwise barred from participation in a particular Medicaid program or any other federal health care program. In determining whether a revocation under this paragraph is appropriate, CMS considers the following factors:

(A) The reason(s) for the termination or revocation.

(B) Whether the provider or supplier is currently terminated, revoked or otherwise barred from more than one program (for example, more than one State's Medicaid program) or has been subject to any other sanctions during its participation in other programs.

(C) Any other information that CMS deems relevant to its determination.

(ii) Medicare may not terminate unless and until a provider or supplier has exhausted all applicable appeal rights.

(iii) CMS may apply paragraph (a)(12)(i) of this section to the provider or supplier under any of its current or former names, numerical identifiers or business identities.

* * * * *

(15)–(16) [Reserved]

(17) *Debt referred to the United States Department of Treasury.* The provider or supplier has an existing debt that CMS refers to the United States Department of Treasury. In determining whether a revocation under this paragraph is appropriate, CMS considers the following factors:

(i) The reason(s) for the failure to fully repay the debt (to the extent this can be determined).

(ii) Whether the provider or supplier has attempted to repay the debt.

(iii) Whether the provider or supplier has responded to CMS' requests for payment.

(iv) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(v) The amount of the debt.

(vi) Any other evidence that CMS deems relevant to its determination.

(18) *Revoked under different name, numerical identifier or business identity.* The provider or supplier is currently revoked under a different name, numerical identifier or business identity, and the applicable reenrollment bar period has not expired. In determining whether a provider or supplier is a currently revoked provider or supplier under a different name, numerical identifier or business identity, CMS investigates the degree of commonality by considering the following factors:

(i) Owning and managing employees and organizations (regardless of whether they have been disclosed on the Form CMS–855 application).

(ii) Geographic location.

(iii) Provider or supplier type.

(iv) Business structure.

(v) Any evidence indicating that the two parties are similar or that the provider or supplier was created to circumvent the revocation or reenrollment bar.

(19) *Affiliation that poses an undue risk.* CMS determines that the provider or supplier has or has had an affiliation under § 424.519 that poses an undue risk of fraud, waste or abuse to the Medicare program.

(20) *Billing from non-compliant location.* CMS may revoke a provider's or supplier's Medicare enrollment, including all of the provider's or supplier's practice locations regardless of whether they are part of the same enrollment, if the provider or supplier billed for services performed at or items furnished from a location that it knew or should have known did not comply with Medicare enrollment requirements. In determining whether and how many of the provider's or supplier's other locations should be revoked, CMS considers the following factors:

(i) The reason(s) for and the specific facts behind the location's non-compliance.

(ii) The number of additional locations involved.

(iii) Whether the provider or supplier has any history of final adverse actions or Medicare or Medicaid payment suspensions.

(iv) The degree of risk that the location's continuance poses to the Medicare Trust Funds.

(v) The length of time that the non-compliant location was non-compliant.

(vi) The amount that was billed for services performed at or items furnished from the non-compliant location.

(vii) Any other evidence that CMS deems relevant to its determination.

(21) *Abusive ordering, certifying, referring, or prescribing of Part A or B services, items or drugs.* The physician or eligible professional has a pattern or practice of ordering, certifying, referring or prescribing Medicare Part A or B services, items or drugs that is abusive, represents a threat to the health and safety of Medicare beneficiaries or otherwise fails to meet Medicare requirements. In making its determination as to whether such a pattern or practice exists, CMS considers the following factors:

(i) Whether the physician's or eligible professional's diagnoses support the orders, certifications, referrals or prescriptions in question.

(ii) Whether there are instances where the necessary evaluation of the patient for whom the service, item or drug was ordered, certified, referred or prescribed could not have occurred (for example, the patient was deceased or out of state at the time of the alleged office visit).

(iii) The number and type(s) of disciplinary actions taken against the physician or eligible professional by the licensing body or medical board for the state or states in which he or she practices, and the reason(s) for the action(s).

(iv) Whether the physician or eligible professional has any history of final adverse actions (as that term is defined in § 424.502).

(v) The length of time over which the pattern or practice has continued.

(vi) How long the physician or eligible professional has been enrolled in Medicare.

(vii) The number and type(s) of malpractice suits that have been filed against the physician or eligible professional related to ordering, certifying, referring or prescribing that have resulted in a final judgment against the physician or eligible professional or in which the physician or eligible professional has paid a settlement to the plaintiff(s) (to the extent this can be determined).

(viii) Whether any State Medicaid program or any other public or private health insurance program has restricted, suspended, revoked or terminated the physician's or eligible professional's ability to practice medicine, and the reason(s) for any such restriction, suspension, revocation or termination.

(ix) Any other information that CMS deems relevant to its determination.

* * * * *

(c) *Reapplying after revocation.* (1) After a provider or supplier has had their enrollment revoked, they are barred from participating in the Medicare program from the effective date of the revocation until the end of the reenrollment bar. The reenrollment bar—

(i) Begins 30 days after CMS or its contractor mails notice of the revocation and lasts a minimum of 1 year, but not greater than 10 years (except for the situations described in paragraphs (c)(2) and (3) of this section), depending on the severity of the basis for revocation.

(ii) Does not apply in the event a revocation of Medicare enrollment is imposed under paragraph (a)(1) of this section based upon a provider's or supplier's failure to respond timely to a revalidation request or other request for information.

(2)(i) CMS may add up to 3 more years to the provider's or supplier's reenrollment bar (even if such period exceeds the 10-year period identified in paragraph (c)(1) of this section) if it determines that the provider or supplier is attempting to circumvent its existing reenrollment bar by enrolling in Medicare under a different name, numerical identifier or business identity.

(ii) A provider's or supplier's appeal rights regarding paragraph (c)(2)(i) of this section—

(A) Are governed by part 498 of this chapter; and

(B) Do not extend to the imposition of the original reenrollment bar under paragraph (c)(1) of this section; and

(C) Are limited to any additional years imposed under paragraph (c)(2)(i) of this section.

(3) CMS may impose a reenrollment bar of up to 20 years on a provider or supplier if the provider or supplier is being revoked from Medicare for the second time. In determining the length of the reenrollment bar under this paragraph (c)(3), CMS considers the following factors:

(i) The reasons for the revocations.

(ii) The length of time between the revocations.

(iii) Whether the provider or supplier has any history of final adverse actions (other than Medicare revocations) or Medicare or Medicaid payment suspensions.

(iv) Any other information that CMS deems relevant to its determination.

(4) A reenrollment bar applies to a provider or supplier under any of its current, former or future names, numerical identifiers or business identities.

* * * * *

(i) *Extension of revocation.* (1) If a provider's or supplier's Medicare enrollment is revoked under paragraph (a) of this section, CMS may revoke any and all of the provider's or supplier's Medicare enrollments, including those under different names, numerical identifiers or business identities and those under different types.

(2) In determining whether to revoke a provider's or supplier's other enrollments under this paragraph (i), CMS considers the following factors:

(i) The reason for the revocation and the facts of the case.

(ii) Whether any final adverse actions have been imposed against the provider or supplier regarding its other enrollments.

(iii) The number and type(s) of other enrollments.

(iv) Any other information that CMS deems relevant to its determination.

(j) *Voluntary termination.* (1) CMS may revoke a provider's or supplier's Medicare enrollment if CMS determines that the provider or supplier voluntarily terminated its Medicare enrollment in order to avoid a revocation under paragraph (a) of this section that CMS would have imposed had the provider or supplier remained enrolled in Medicare. In making its determination, CMS considers the following factors:

(i) Whether there is evidence to suggest that the provider knew or should have known that it was or would be out of compliance with Medicare requirements.

(ii) Whether there is evidence to suggest that the provider knew or should have known that its Medicare enrollment would be revoked.

(iii) Whether there is evidence to suggest that the provider voluntarily terminated its Medicare enrollment in order to circumvent such revocation.

(iv) Any other evidence or information that CMS deems relevant to its determination.

(2) A revocation under paragraph (j)(1) of this section is effective the day before the Medicare contractor receives the provider's or supplier's Form CMS–855 voluntary termination application.

■ 14. Amend § 424.540 by revising paragraphs (b)(1) and (2) to read as follows:

§ 424.540 Deactivation of Medicare billing privileges.

* * * * *

(b) * * *

(1) In order for a deactivated provider or supplier to reactivate its Medicare billing privileges, the provider or supplier must recertify that its enrollment information currently on file with Medicare is correct and furnish any missing information as appropriate.

(2) Notwithstanding paragraph (b)(1) of this section, CMS may, for any reason, require a deactivated provider or supplier to, as a prerequisite for reactivating its billing privileges, submit a complete Form CMS–855 application.

* * * * *

■ 15. Amend § 424.570 by revising paragraphs (a)(1)(iii) and (iv) to read as follows:

§ 424.570 Moratoria on newly enrolling Medicare providers and suppliers.

(a) * * *

(1) * * *

(iii) The temporary moratorium does not apply to any of the following:

(A) Changes in practice location (except if the location is changing from a location outside the moratorium area to a location inside the moratorium area).

(B) Changes in provider or supplier information, such as phone numbers.

(C) Changes in ownership (except changes in ownership of home health agencies that would require an initial enrollment).

(iv) A temporary moratorium does not apply to any enrollment application that has been received by the Medicare contractor prior to the date the moratorium is imposed.

* * * * *

PART 455—PROGRAM INTEGRITY: MEDICAID

■ 16. The authority citation for part 455 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 17. Amend § 455.101 by adding the definition of ''Affiliation'' in alphabetical order to read as follows:

§ 455.101 Definitions.

Affiliation means, for purposes of applying § 455.107, any of the following:

(1) A 5 percent or greater direct or indirect ownership interest that an individual or entity has in another organization.

(2) A general or limited partnership interest (regardless of the percentage) that an individual or entity has in another organization.

(3) An interest in which an individual or entity exercises operational or managerial control over or directly or indirectly conducts the day-to-day operations of another organization (including, for purposes of this provision, sole proprietorships), either under contract or through some other arrangement, regardless of whether or not the managing individual or entity is a W–2 employee of the organization.

(4) An interest in which an individual is acting as an officer or director of a corporation.

(5) Any payment assignment relationship under § 447.10(g) of this chapter.

* * * * *

■ 18. Revise § 455.103 to read as follows:

§ 455.103 State plan requirement.

A State plan must provide that the requirements of §§ 455.104 through 455.107 are met.

■ 19. Add § 455.107 to subpart B to read as follows:

§ 455.107 Disclosure of affiliations.

(a) *Definitions.* For purposes of this section only, the following terms apply:

(1) ''Uncollected debt'' only applies to the following:

(i) Medicare, Medicaid or CHIP overpayments for which CMS or the State has sent notice of the debt to the affiliated provider or supplier.

(ii) Civil money penalties (as defined in § 424.57(a) of this chapter).

(iii) Assessments (as defined in § 424.57(a) of this chapter).

(2) ''Revoked,'' ''Revocation,'' ''Terminated,'' and ''Termination'' include situations where the affiliated provider or supplier voluntarily terminated its Medicare, Medicaid or CHIP enrollment to avoid a potential revocation or termination.

(b) *General.* A provider that is initially enrolling in the Medicaid program or is revalidating its Medicaid enrollment information must disclose whether it or any of its owning or managing employees or organizations (consistent with the terms ''person with an ownership or control interest'' and ''managing employee'' as defined in § 455.101) has or, within the previous 5 years, has had an affiliation with a currently or formerly enrolled Medicare, Medicaid or CHIP provider or supplier that—

(1) Currently has an uncollected debt to Medicare, Medicaid or CHIP, regardless of—

(i) The amount of the debt;

(ii) Whether the debt is currently being repaid; or

(iii) Whether the debt is currently being appealed.

(2) Has been or is subject to a payment suspension under a federal health care program (as that latter term is defined in section 1128B(f) of the Act), regardless of when the payment suspension occurred or was imposed;

(3) Has been or is excluded from participation in Medicare, Medicaid or CHIP, regardless of whether the exclusion is currently being appealed or when the exclusion occurred or was imposed; or

(4) Has had its Medicare, Medicaid or CHIP enrollment denied, revoked or terminated, regardless of any of the following:

(i) The reason for the denial, revocation or termination.

(ii) Whether the denial, revocation or termination is currently being appealed.

(iii) When the denial, revocation or termination occurred or was imposed.

(c) *Information.* The initially enrolling or revalidating provider must disclose the following information about each affiliation:

(1) General identifying information about the affiliated provider or supplier, which includes the following:

(i) Legal name as reported to the Internal Revenue Service or the Social Security Administration (if the affiliated provider or supplier is an individual).

(ii) ''Doing business as'' name (if applicable).

(iii) Tax identification number.

(iv) National Provider Identifier (NPI).

(2) Reason for disclosing the affiliated provider or supplier.

(3) Specific data regarding the affiliation relationship, including the following:

(i) Length of the relationship.

(ii) Type of relationship.

(iii) Degree of affiliation.

(4) If the affiliation has ended, the reason for the termination.

(d) *Mechanism.* The information described in paragraphs (b) and (c) of this section must be furnished to the State in a manner prescribed by the State.

(e) *Denial or revocation.* The failure of the provider to fully and completely report the information required in this section when the provider knew or should reasonably have known of this information may result in, as applicable, the denial of the provider's initial enrollment application or the termination of the provider's enrollment in Medicaid or CHIP.

(f) *Undue risk.* Upon receipt of the information described in paragraphs (b)

and (c) of this section, the State, in consultation with CMS, determines whether any of the disclosed affiliations poses an undue risk of fraud, waste or abuse by considering the following factors:

(1) The duration of the affiliation.

(2) Whether the affiliation still exists and, if not, how long ago the affiliation ended.

(3) The degree and extent of the affiliation.

(4) If applicable, the reason for the termination of the affiliation.

(5) Regarding the affiliated provider's or supplier's action under paragraph (b) of this section, all of the following:

(i) The type of action.

(ii) When the action occurred or was imposed.

(iii) Whether the affiliation existed when the action occurred or was imposed.

(iv) If the action is an uncollected debt—

(A) The amount of the debt;

(B) Whether the affiliated provider or supplier is repaying the debt; and

(C) To whom the debt is owed.

(v) If a denial, revocation, termination, exclusion or payment suspension is involved, the reason for the action.

(6) Any other evidence that the state, in consultation with CMS, deems relevant to its determination.

(g) *Determination of undue risk.* A determination by the state, in consultation with CMS, that a particular affiliation poses an undue risk of fraud, waste or abuse will result in, as applicable, the denial of the provider's initial enrollment in Medicaid or CHIP or the termination of the provider's enrollment in Medicaid or CHIP.

(h) *New or changed information.* (1) A provider must report the following:

(i) New or changed information regarding existing affiliations.

(ii) Information regarding new affiliations.

(2) A provider is not required to report new or changed information regarding past affiliations (except as part of a revalidation application).

(i) *Undisclosed affiliations.* The State, in consultation with CMS, may apply paragraph (g) of this section to situations where a reportable affiliation (as described in paragraphs (b) and (c) of this section) poses an undue risk of fraud, waste or abuse, but the provider has not yet disclosed or is not required at that time to disclose the affiliation to the State.

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 20. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 21. Amend § 457.990 by:

■ a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively.

■ b. Adding a new paragraph (a).

The addition reads as follows:

§ 457.990 Provider and supplier screening, oversight, and reporting requirements.

* * * * *

(a) Section 455.107.

* * * * *

Dated: November 25, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: December 8, 2015.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–04312 Filed 2–25–16; 11:15 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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A new table will be published in the first issue of each month.

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